

STATE OF MICHIGAN
 DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET
 PROCUREMENT
 P.O. BOX 30026, LANSING, MI 48909
 OR
 525 W. ALLEGAN, LANSING, MI 48933

CHANGE NOTICE NO. 3 (Revised)
 to
CONTRACT NO. 071B9200164
 between
THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF CONTRACTOR	PRIMARY CONTACT	EMAIL
TIAA-CREF Tuition Financing, Inc.	Michael Noone	mnoone@tiaa-cref.org
730 Third Avenue	PHONE	CONTRACTOR'S TAX ID NO. (LAST FOUR DIGITS ONLY)
New York NY, 10017-3206	212 - 913-2317	4203

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
PROGRAM MANAGER / CCI	TREA	Robin Lott	517-241-3301	lottr@michigan.gov
CONTRACT ADMINISTRATOR	DTMB	Brandon Samuel	(517) 284-7025	SamuelB@michigan.gov

CONTRACT SUMMARY			
DESCRIPTION: Adviser Sold Michigan Education Savings Program Services			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
March 09, 2009	March 08, 2014	2 - 1 year	March 08, 2016
PAYMENT TERMS		DELIVERY TIMEFRAME	
N/A		N/A	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS			
N/A			

DESCRIPTION OF CHANGE NOTICE				
EXERCISE OPTION?	LENGTH OF OPTION	EXERCISE EXTENSION?	LENGTH OF EXTENSION	REVISED EXP. DATE
<input type="checkbox"/>		<input checked="" type="checkbox"/>	1 Year	March 08, 2017
CURRENT VALUE		VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE	
\$38,079,975.46		\$ 0.00	\$38,079,975.46	
DESCRIPTION: Effective September 18, 2015 this contract is hereby extended through March 8, 2017, and the following amendment is hereby incorporated into the contract per Attachment A Price Proposal. This change includes a reduction from a 10 Basis Points to 5.0 Basis Point for State Administrative Fees and Total Fees. Please note the primary contact is changed to Michael Noone. All other terms, conditions, specifications, and pricing remain the same. Per agency request, contractor agreement and DTMB approval.				

Attachment A, Price Proposal

Age-Based Allocation Option (A units)

Size of Investment Portfolio	Program Management Fees (in Basis Points)	Investment Management Fees	Other Annual Fees (Specify Details) (1)	Fee Sharing	State Administrative Fee* (bps)	Total Fees (in Basis Points)**	Upfront Sales Load (2)	Contingent Sales Load
1) \$1,000,000,000 or less	50	43-63	25	N/A	5 Basis Points (bps)	123-143	0-4.25%	N/A
2) \$1,000,000,000.01 or greater	45	43-63	25	N/A	5 bps	118-138	0-4.25%	N/A

Individual Fund Options (A units)

Size of Investment Portfolio	Program Management Fees (in Basis Points)	Investment Management Fees	Other Annual Fees (Specify Details) (1)	Fee Sharing	State Administrative Fee* (bps)	Total Fees (in Basis Points)**	Upfront Sales Load (2)	Contingent Sales Load
1) \$1,000,000,000 or less	50	43-107	25	N/A	5 Basis Points (bps)	123-167	0-4.25%	N/A
2) \$1,000,000,000.01 or greater	45	43-107	25	N/A	5 bps	118-162	0-4.25%	N/A

Age-Based Allocation Option (C units)

Size of Investment Portfolio	Program Management Fees (in Basis Points)	Investment Management Fees	Other Annual Fees (Specify Details) (1)	Fee Sharing	State Administrative Fee* (bps)	Total Fees (in Basis Points)**	Upfront Sales Load (2)	Contingent Sales Load
1) \$1,000,000,000 or less	50	43-63	75	N/A	5 Basis Points (bps)	173-193	N/A	A 1% CDSC applies for 12 months from the date of contribution
2) \$1,000,000,000.01 or greater	45	43-63	75	N/A	5 bps	168-188	N/A	A 1% CDSC applies for 12 months from the date of contribution

Individual Fund Options (C units)

Size of Investment Portfolio	Program Management Fees (in Basis Points)	Investment Management Fees	Other Annual Fees (Specify Details)	Fee Sharing	State Administrative Fee **	Total Fees (in Basis Points) **	Upfront Sales Load (2)	Contingent Sales Load
1) \$1,000,000.00 or less	\$0	43-107	33 (1)	N/A	5 Basis Points (bps)	131-195	N/A	A 1% CDSOC applies for 12 months from the date of contribution
2) \$1,000,000.00.01 or greater	45	43-107	33	N/A	5 bps	128-190	N/A	A 1% CDSOC applies for 12 months from the date of contribution

(1) Ongoing trail commission (bps) paid annually to the broker/dealer firm of record for servicing the account. An annual Account Maintenance Fee of \$25 applies to accounts less than \$5,000. In addition to on-going trail commission.

(2) Step-variable pricing for a multi-share (Upfront Sales Load) is based on the aggregate contributions for an individual account owner. In addition, these sales charges (Upfront Sales Load) may be aggregated based on a letter of intent by the account owner at time of initial purchase. The step-variable pricing follows:

Aggregate Contributions	Upfront Sales Load
\$0-99,999	4.25%
\$100,000-249,999	3.50%
\$250,000-499,999	2.50%
\$500,000-999,999	2.00%
\$1,000,000 or greater	0.00%

* State is not responsible for and will not provide funding of any type in connection with administration of the advisor-sold MIESP. All administrative costs must be paid from the program assets based on the account values. The contractor will submit State administrative fees to the State monthly in arrears. Specific details for payment routing will be furnished with the Contract Compliance Inspector after contract award.

** The "Total Fees" column is to include all expenditures necessary to fulfill the requirements of this Contract. Pricing will be based on basis points of the total assets. Payment for this contract will occur monthly based on the advisor-sold MIESP average daily net assets of the accounts and paid by the account holder. Pursuant to P.A. 161, total program administrative fees cannot exceed 2.0% of the average daily net assets of the account.

1. C units/shares do not convert to A units.

2. A 1% Contingent Sales Load (CDSOC) applies for 12 months from the date of the contribution.

TIAA-CREF Tuition Financing, Inc. (TFI) will pay brokers/advisors to offer the MESP Advisor-Sold MESP as follows:

	Investor Pays	Broker Receives	TFI Retains
A Load	0 - 4.25%	0 - 4.25%	0
A Annual Charge	0.25%	0.25%	0
C Annual Charge	0.33 - 0.75%	0.33 - 0.75%	0

Neither TFI nor AGID receives compensation from the A-Unit sales load, the A-Unit annual charge, or the C-Unit annual charge.

STATE OF MICHIGAN
 DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET
 PROCUREMENT
 P.O. BOX 30026, LANSING, MI 48909
 OR
 525 W. ALLEGAN, LANSING, MI 48933

CHANGE NOTICE NO. 2
 to
CONTRACT NO. 071B9200164
 Between
THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF CONTRACTOR	PRIMARY CONTACT	EMAIL
TIAA-CREF Tuition Financing Inc. 730 Third Avenue New York, NY 10017-3206	Randy Brady	RBrady@tiaa-cref.org
	PHONE	VENDOR FEIN # (LAST FOUR DIGITS ONLY)
	(704) 944-1350	4203

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
PROGRAM MANAGER	Treasury	Robin Lott	517-241-4884	lottr@michigan.gov
CONTRACT ADMINISTRATOR	DTMB	Chelsea Edgett	517-284-7031	edgettcc@michigan.gov

CONTRACT SUMMARY			
DESCRIPTION: Advisor-Sold Michigan Advisor Plan (MAP) Services – Department of Treasury			
Provide a basic, but comprehensive, description of services.			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
March 9, 2009	March 8, 2014	Two 1-year	March 8, 2015
PAYMENT TERMS	F.O.B.	SHIPPED TO	
N/A	N/A	N/A	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS			
N/A			

DESCRIPTION OF CHANGE NOTICE				
EXTEND CONTRACT EXPIRATION DATE	EXERCISE CONTRACT OPTION YEAR(S)	EXTENSION BEYOND CONTRACT OPTION YEARS	LENGTH OF OPTION/EXTENSION	EXPIRATION DATE AFTER CHANGE
<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1 year	March 8, 2016
CURRENT VALUE		VALUE/COST OF CHANGE NOTICE	ESTIMATED REVISED AGGREGATE CONTRACT VALUE	
\$36,079,975.46		\$2,000,000	\$38,079,975.46	
DESCRIPTION: Effective February 24, 2015, this contract is hereby extended to March 8, 2016 and increased by \$2,000,000. All other terms, conditions, pricing, and specifications remain the same. Per vendor, and agency agreement, DTMB Procurement approval and the approval of the State Administrative Board on February 24, 2015.				

STATE OF MICHIGAN
DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET
PROCUREMENT
P.O. BOX 30026, LANSING, MI 48909
OR
530 W. ALLEGAN, LANSING, MI 48933

CHANGE NOTICE NO. 1
to
CONTRACT NO. 071B9200164
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
TIAA-CREF Tuition Financing, Inc. 730 Third Avenue New York, NY 10017-3206	Randy Brady	RBrady@tiaa-cref.org
	TELEPHONE	CONTRACTOR #, MAIL CODE
	(704) 988-1350	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR	Treasury	Robin Lott	517-241-4884	lottr@michigan.gov
BUYER	DTMB	Chelsea Edgett	517-284-7031	edgettc@michigan.gov

CONTRACT SUMMARY:			
DESCRIPTION: Advisor-Sold Michigan Education Savings Program (MESP) Services – Department of Treasury			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
March 9, 2009	March 8, 2014		March 8, 2014
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
N/A	N/A	N/A	N/A
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS:			
N/A			

DESCRIPTION OF CHANGE NOTICE:				
EXTEND CONTRACT EXPIRATION DATE	EXERCISE CONTRACT OPTION YEAR(S)	EXTENSION BEYOND CONTRACT OPTION YEARS	LENGTH OF OPTION/EXTENSION	EXPIRATION DATE AFTER CHANGE
<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1 year	March 8, 2015
VALUE/COST OF CHANGE NOTICE:		ESTIMATED REVISED AGGREGATE CONTRACT VALUE:		
\$2,000,000.00		\$36,079,975.46		
Effective February 25, 2014, this contract is hereby extended to March 8, 2015 and increased by \$2,000,000.00. All other terms, conditions, pricing and specifications remain the same. Per vendor and agency agreement, DTMB Procurement approval and the approval of the State Administrative Board on February 25, 2014.				

STATE OF MICHIGAN
DEPARTMENT OF MANAGEMENT AND BUDGET
PURCHASING OPERATIONS
P.O. BOX 30026, LANSING, MI 48909
OR
530 W. ALLEGAN, LANSING, MI 48933

June 3, 2009

NOTICE
TO
CONTRACT NO. 071B9200164
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR TIAA-CREF Tuition Financing, Inc. 730 Third Avenue New York, NY 10017-3206 pmcnulty@tiaa-cref.org	TELEPHONE (203) 281-2401 Pamela L. McNulty
	BUYER/CA (517) 241-1916 Jim Wilson
Contract Compliance Inspector: Robin Lott (517) 241-4884	
Advisor-Sold Michigan Education Savings Program (MESP) Services – Department of Treasury	
CONTRACT PERIOD: From: March 9, 2009 To: March 8, 2014	
TERMS N/A	SHIPMENT N/A
F.O.B. N/A	SHIPPED FROM N/A
MINIMUM DELIVERY REQUIREMENTS N/A	

The terms and conditions of this Contract are those of this Contract Agreement, the Contractor's proposal dated June 26, 2008, and clarifications dated August 12, September 2 and October 24, 2008. In the event of any conflicts between the specifications, and terms and conditions, indicated by the State and those indicated by the Contractor, those of the State take precedence.

Current Authorized Spend Limit: \$34,079,975.46

STATE OF MICHIGAN
DEPARTMENT OF MANAGEMENT AND BUDGET
PURCHASING OPERATIONS
P.O. BOX 30026, LANSING, MI 48909
OR
530 W. ALLEGAN, LANSING, MI 48933

CONTRACT NO. 071B9200164
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR		TELEPHONE (203) 281-2401
TIAA-CREF Tuition Financing, Inc. 730 Third Avenue New York, NY 10017-3206 pmcnulty@tiaa-cref.org		Pamela L. McNulty
		BUYER/CA (517) 241-1916
		Jim Wilson
Contract Compliance Inspector: Robin Lott (517) 241-4884		
Advisor-Sold Michigan Education Savings Program (MESP) Services – Department of Treasury		
CONTRACT PERIOD: From: March 9, 2009 To: March 8, 2014		
TERMS	N/A	SHIPMENT
		N/A
F.O.B.	N/A	SHIPPED FROM
		N/A
MINIMUM DELIVERY REQUIREMENTS		
N/A		
MISCELLANEOUS INFORMATION:		
The terms and conditions of this Contract are those of this Contract Agreement, the Contractor's proposal dated June 26, 2008, and clarifications dated August 12, September 2 and October 24, 2008. In the event of any conflicts between the specifications, and terms and conditions, indicated by the State and those indicated by the Contractor, those of the State take precedence.		
Current Authorized Spend Limit: \$34,079,975.46		

THIS IS NOT AN ORDER: Orders for delivery may be issued directly by the Department of Treasury through the issuance of a Purchase Order Form.

All terms and conditions of the invitation to bid are made a part hereof.

FOR THE CONTRACTOR:		FOR THE STATE:	
TIAA-CREF Tuition Financing, Inc.		Signature	
Firm Name		Elise A. Lancaster, Director	
Authorized Agent Signature		Name/Title	
Authorized Agent (Print or Type)		Purchasing Operations	
Date		Division	
		Date	



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Attachments

Attachment A, Pricing

**DEFINITIONS**

“Days” means calendar days unless otherwise specified.

“24x7x365” means 24 hours a day, seven days a week, and 365 days a year (including the 366th day in a leap year).

“Additional Service” means any Services/Deliverables within the scope of the Contract, but not specifically provided under any Statement of Work, that once added will result in the need to provide the Contractor with additional consideration.

“Audit Period” has the meaning given in **Section 2.093**.

“Business Day,” whether capitalized or not, shall mean any day other than a Saturday, Sunday or State-recognized legal holiday (as identified in the Collective Bargaining Agreement for State employees) from 8:00am EST through 5:00pm EST unless otherwise stated.

“Blanket Purchase Order” is an alternate term for Contract and is used in the States computer system.

“Business Critical” means any function identified in any Statement of Work as Business Critical.

“Chronic Failure” is defined in any applicable Service Level Agreements.

“Deleted – Not Applicable” means that section is not applicable or included in this Contract. This is used as a placeholder to maintain consistent numbering.

“Deliverable” means physical goods and/or commodities as required or identified by a Statement of Work

“DMB” means the Michigan Department of Management and Budget

“Environmentally preferable products” means a product or service that has a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. Such products or services may include, but are not limited to, those which contain recycled content, minimize waste, conserve energy or water, and reduce the amount of toxics either disposed of or consumed.

“Excusable Failure” has the meaning given in **Section 2.214**.

“Hazardous material” means any material defined as hazardous under the latest version of federal Emergency Planning and Community Right-to-Know Act of 1986 (including revisions adopted during the term of the Contract).

“Incident” means any interruption in Services.

“ITB” is a generic term used to describe an Invitation to Bid. The ITB serves as the document for transmitting the RFP to potential bidders.

“Key Personnel” means any Personnel designated in **Section 1.031** as Key Personnel.

“MESP” means Michigan Education Savings Program. A direct-sold MESP is already in place, and this Contract is for an advisor-sold MESP.

“MET” means Michigan Education Trust.

“New Work” means any Services/Deliverables outside the scope of the Contract and not specifically provided under any Statement of Work, that once added will result in the need to provide the Contractor with additional consideration.

“Ozone-depleting substance” means any substance the Environmental Protection Agency designates in 40 CFR part 82 as: (1) Class I, including, but not limited to, chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or (2) Class II, including, but not limited to, hydrochlorofluorocarbons.



“Post-Consumer Waste” means any product generated by a business or consumer which has served its intended end use, and which has been separated or diverted from solid waste for the purpose of recycling into a usable commodity or product, and which does not include post-industrial waste.

“Post-Industrial Waste” means industrial by-products which would otherwise go to disposal and wastes generated after completion of a manufacturing process, but does not include internally generated scrap commonly returned to industrial or manufacturing processes.

“Recycling” means the series of activities by which materials that are no longer useful to the generator are collected, sorted, processed, and converted into raw materials and used in the production of new products. This definition excludes the use of these materials as a fuel substitute or for energy production.

“Reuse” means using a product or component of municipal solid waste in its original form more than once.

“RFP” means a Request for Proposal designed to solicit proposals for services.

“Services” means any function performed for the benefit of the State.

“Source reduction” means any practice that reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment prior to recycling, energy recovery, treatment, or disposal.

“State Location” means any physical location where the State performs work. State Location may include state-owned, leased, or rented space.

“Subcontractor” means a company Contractor delegates performance of a portion of the Services to, but does not include independent contractors engaged by Contractor solely in a staff augmentation role.

“Unauthorized Removal” means the Contractor’s removal of Key Personnel without the prior written consent of the State.

“Waste prevention” means source reduction and reuse, but not recycling.

“Waste reduction”, or “pollution prevention” means the practice of minimizing the generation of waste at the source and, when wastes cannot be prevented, utilizing environmentally sound on-site or off-site reuse and recycling. The term includes equipment or technology modifications, process or procedure modifications, product reformulation or redesign, and raw material substitutions. Waste treatment, control, management, and disposal are not considered pollution prevention, per the definitions under Part 143, Waste Minimization, of the Natural Resources and Environmental Protection Act (NREPA), 1994 PA 451, as amended.

“Work in Progress” means a Deliverable that has been partially prepared, but has not been presented to the State for Approval.

“Work Product” refers to any data compilations, reports, and other media, materials, or other objects or works of authorship created or produced by the Contractor as a result of an in furtherance of performing the services required by this Contract.

**Article 1 – Statement of Work (SOW)****1.010 Project Identification****1.011 Project Request**

This is a Contract for advisor-sold Michigan Education Savings Program (MESP) services.

1.012 Background

The Michigan Education Savings Program (MESP) was created under Public Act No. 161 of 2000 of the State of Michigan (State), which was amended by PA 153 of 2007 (PA 161). A direct-sold education savings plan is currently provided on behalf of the State by TIAA-CREF Tuition Financing, Inc. MESP offers investment and tax incentives to encourage families and others to save for a student to attend any "eligible educational institution" in the nation. This program is established as a "qualified tuition plan" (QTP) under Section 529 of the Internal Revenue Code (IRC Sec. 529). The State Treasurer is responsible for administering the program and is the trustee for MESP funds. As of March 31, 2008, MESP's direct-sold plan had 232,764 accounts and assets of \$1.9 billion (includes matching grant accounts).

Funds deposited into a MESP account for a given beneficiary will be made available when the beneficiary is enrolled in an eligible educational institution. These funds may be used to pay the "qualified higher education expenses" of the account beneficiary, which can include tuition, fees, books, supplies, equipment required for attendance, room and board up to the amount allowed for room and board in Federal Title IV financial aid programs. (This allowance is established periodically by the U.S. Department of Education). A 10% federal excise tax will be assessed on the earnings portion of withdrawals not used to pay for qualified higher education expenses. Funds may be withdrawn in whole or in part from an account balance (upon 60 days notice or a shorter period as authorized in the MESP participation agreement). Savings account earnings grow tax deferred while in an account and earnings are tax-free as long as they are used for qualified higher education expenses.

The maximum amount a beneficiary may have deposited on his/her behalf is \$235,000, which includes amounts deposited in the direct-sold plan and the Michigan Education Trust (MET) prepaid program. Beneficiaries may have multiple accounts established on their behalf. Account owners may establish an account for any beneficiary, but only one account for each beneficiary. An account may be opened with a minimum cash deposit of \$25 or payroll deduction of \$15. Amounts in excess of \$235,000 must be withdrawn immediately or transferred to another beneficiary's account.

Contributions may be made by cash, check, electronic transfer, credit card or any similar method, but shall not be property. A state tax deduction will be allowed for contributions made each year up to \$5,000 for a single return and \$10,000 for a joint return per tax year.

Quarterly and periodic statements will be made available to account owners as well as other reports required under IRC Sec. 529.

1.020 Scope of Work and Deliverables**1.021 In Scope**

The main objective of this Contract is to provide advisor-sold MESP services.

Contractor, through its Subcontractor, AGID will provide services necessary for the development, implementation and management of the advisor-sold MESP including but not limited to: record keeping, investment of assets, marketing, promotion, distribution, customer service, managerial, professional, legal, clerical, technical and administrative services. All program components and materials developed by the Contractor must be approved by the Contract Compliance Inspector. Contractor will need to develop, implement and/or maintain a savings program that complies with PA 161 and IRC Sec. 529, provide legal, financial and other resources necessary. The Contractor must be ready to establish and maintain education savings accounts by September 1, 2009.

Pursuant to PA 161, total program administrative fees cannot exceed 2.0% of the average daily net assets of the accounts (excludes sales charges).

**1.022 Work and Deliverable**

Contractor must provide Deliverables/Services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth below:

1.0 Overall Work Plan for Attaining the Objectives of This Project Based on the Following Information:

- 1.1 Essential to the ongoing administration of this program is its qualification in accordance with PA 161 and IRC Sec. 529. The program will be validated by an independent unqualified legal opinion stating the advisor-sold MESP complies with the IRS rules and proposed regulations for QTPs

Once the program is fully developed a legal opinion of counsel will be obtained regarding the compliance of the MESP-Advisor Plan complies with IRS and applicable state laws.

- 1.2 The State must be assured that both federal and state securities law registration, exemptions, etc, are fully understood. The Contractor will provide an opinion of counsel to affect that the plan will be exempt from state and federal securities laws registration.

Although the SEC has issued no-action letters with respect to exemptions from registration of qualified state tuition savings programs in the past, the SEC staff has indicated that they will no longer respond to no-action letter requests concerning the status of such programs under the federal securities laws, unless the structure of a program differs significantly from existing programs. In the event that the SEC again entertains requests for no-action letter, the Contractor will assist the State, if desired, in obtaining a no-action letter.

With regard to the MESP-Direct Plan, Contractor has obtained a legal opinion of counsel concerning securities law issues and has also obtained a Blue Sky memorandum from counsel about state securities law issues. The Contractor would pursue a similar approach with regard to the MESP-Advisor Plan.

- 1.3 In accordance with IRC Sec. 529 the State will be “actively involved” on an ongoing basis in the administration of the Program, including the oversight of all decisions regarding the investment of the assets

The Contractor will collaborate with the Contract Compliance Inspector in all aspects of the administration of the MESP-Advisor Plan. The Contractor will build upon the foundation built for MESP-Direct to maximize the efficient use of State resources and to minimize the regulatory and operational costs of launching the new Advisor-sold program. The Contractor’s collaborative work for the MESP-Advisor Plan will include:

- Overall program management – The Contractor will continue to meet regularly with the Contract Compliance Inspector and provide (at a minimum) monthly and quarterly program management reports.
- Marketing – The Contractor will work closely with the Contract Compliance Inspector on behalf of our Subcontractor to execute the best possible marketing and distribution program. At a minimum the Contractor will require its Subcontractor to prepare and present a marketing plan, conduct an annual marketing review, and obtain approval of marketing and program materials.
- Investments – by working with its Subcontractor, the Contractor will strive to continuously provide the best possible investment options under the MESP-Advisor Plan. The Contractor will coordinate carefully with its Subcontractor on the proposed investment firms and various funds to offer a multiple-manager product. The Contractor will add MESP-Advisor content to its current regime of annual investment performance review and asset allocation review and recommendations. Though the annual meeting will remain the official vehicle for investment review and approval, the Contractor will continue with on-going dialogue with the State and will provide information and consultation at any point that it is needed.
- Other program management –The Contractor will pro-actively work with and meet with appropriate State personnel on a wide variety of program management issues.



1.4 Level of market saturation within independent channels, banks, etc. as follows:

- Distribution system, including the various channels within the network: Within the state of Michigan the Subcontractor maintains relationships with large wirehouse firms, “independent” firms, bank broker dealers and insurance companies. Relationships that exist or have existed in Michigan include:
 - AG Edwards, American Express Financial Advisors, Ameriprise Financial Services, AXA Advisors, Citigroup Global Markets, Comerica Securities, Edward Jones, Fahnstock & Co., HR Block, Linsco Private Ledger, Merrill Lynch, Morgan Stanley, Mutual Service Corp., Primevest, Raymond James Financial Services, Robert W. Baird, Sigma Financial Corp., UBS Financial Services, USA Financial Securities.
- Number of professionals in each channel: The Subcontractor has four individuals dedicated to Michigan, who, on a full-time basis, serve as distribution agents known as “wholesalers”. Two reside in the State and two serve as “internal wholesalers” working from its headquarters in New York.
- Number of Michigan-based brokers and offices that can offer the advisor-sold MESP. Every licensed brokerage office and individual in the State will be invited to enter into a selling agreement to offer the MESP-Advisor Plan.

1.5 The MESP-Advisor Plan will require a separate selling agreement. Upon final agreement with the State, the Subcontractor will pursue the execution of new selling agreements with interested firms with a presence in Michigan prior to the launch of the MESP-Advisor Plan.

1.6 Training and support provided to distribution network: The Subcontractor will provide training and support to its distribution network on an ongoing basis through a number of different approaches.

Specifically with regard to the MESP-Advisor Plan launch, the Subcontractor conducts informational meetings throughout the State to reach as many independent advisors as possible. During these sessions, the Subcontractor’s wholesalers will present the MESP-Advisor Plan, distribute program literature and be available to answer questions about the program. For the larger brokerage firms, special efforts will be made to access their branch locations. The Subcontractor expects to coordinate with these broker-dealer’s home offices to most effectively reach those advisors. In addition, The Subcontractor will retain consultants from SavingforCollege.com to provide additional education and training Michigan advisors.

The Subcontractor will also provide educational opportunities on an on-going basis as needed and periods when awareness and interest in 529 plans may be naturally heightened, such as during tax and back to school seasons and at year-end.

2.0 Investment Services

2.1 Recommended Investment Policy

In designing the investment strategy for the MESP-Advisor Plan, the Contractor and Subcontractor will take into account several factors that distinguish saving for college from other savings objectives. Of primary importance for many investors in meeting college savings goals is the ability to earn a rate of return that is at least equal to the rate of increase in the costs of higher education while limiting the risk of losing principal. For most college savers, this objective must be met under a variety of market conditions and over investment time frames ranging from a few years to 18 years or more. As a result, an investment vehicle designed to meet the needs of individuals saving for college must provide enough breadth and flexibility to appeal to investors who may vary greatly with respect to level of risk tolerance, investment knowledge, savings objectives, and individual circumstances. The investment policy for the MESP-Advisor Plan recognizes and takes into account these unique aspects of educational saving.

The investment policy for the MESP-Advisor Plan recognizes the differences between both the consumer dynamics in direct-sold and advisor-sold 529 plans. Due to the current economic conditions and other changes since June 2008, Allianz Global Investors Solutions LLC (AGIS), an affiliate of AGID, will provide the investment related services for all options, including the Age Based options, following parameters outlined in sections 2.1



The Advisor Plan's Age-Based Allocation option will differ significantly from the MESP-Direct option through the use of underlying actively managed funds which possess higher appeal to financial advisors, brokers and their clientele.

In addition, investment options that invest in a single underlying fund will be offered across asset classes and specific sectors to provide flexibility in the construction of investment portfolios that appeal to the advisor market and their clientele.

The investment policy, strategy and method of implementation is detailed on the following pages.

Investment Options for the MESP-Advisor Plan

- Six age-based portfolios, based on the age of the enrolled child: 0-3 years, 4-7 years, 8-11 years, 12-14 years, 15-17 years and 18+ years.
- Investment options that invest in a single underlying fund for advisors to build their own tailored portfolios

Investment Universe for Underlying Funds

- Allianz and PIMCO funds
- Third party funds

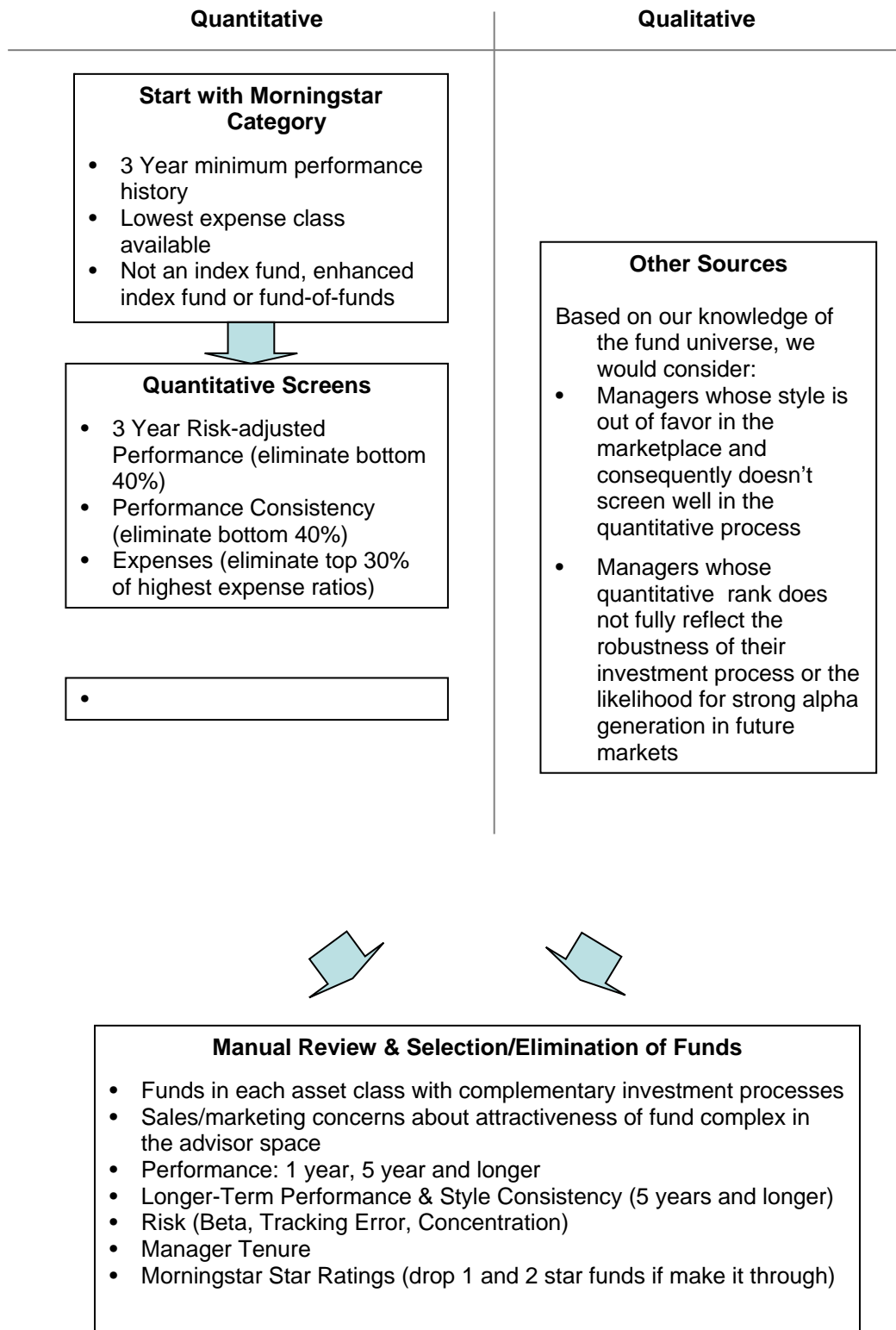
Summary of process for third party fund selection:

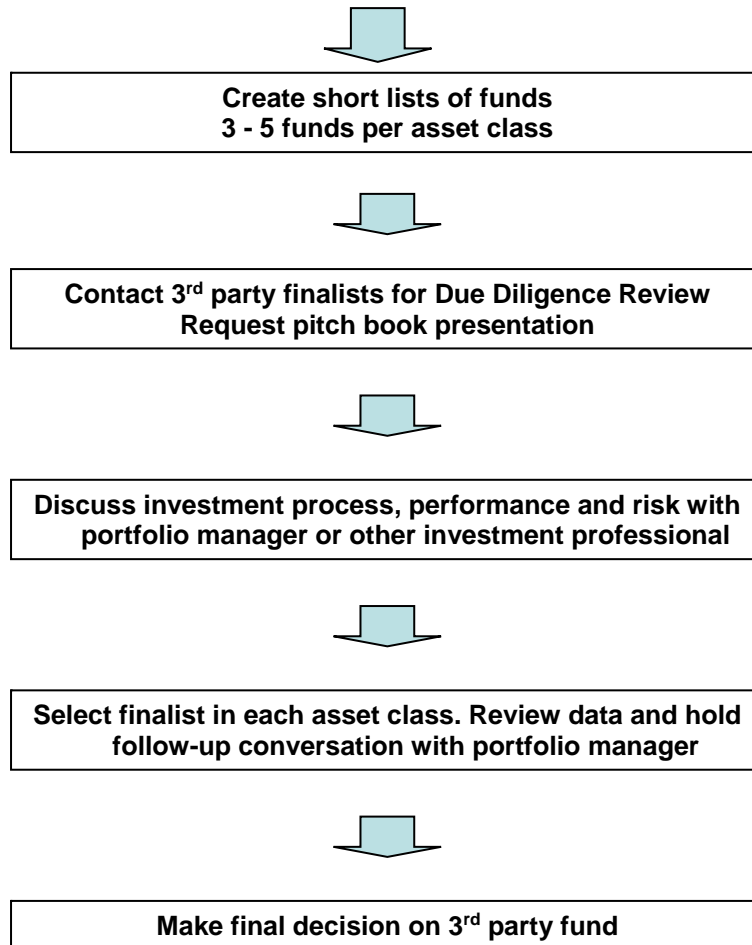
1. Apply quantitative screening and ranking system
2. Select short list of funds based on:
 1. Consistent track-record and superior performance
 2. Style characteristics
 3. Attractiveness in advisor space
3. Interview portfolio managers of the selected funds
4. Pick a finalist in each asset class
5. Meet with portfolio managers a second time, if additional questions remain
6. Make final selections

Constraints in Age-based portfolio construction: blended 65 basis point cap on total expenses for each age-based portfolio.



The following outlines the process which is generally employed by AGIS to select underlying managers/mutual funds





longer applies

No

Output of AGID Third Party Fund Selection Process

After the full due diligence process, recommendations for underlying funds:

**For Allianz funds:**

TFI will choose 1 or 2 Allianz funds per asset class, depending on:

- Which Allianz funds pass the screens and rank well overall in the quantitative process
- If an Allianz fund does not currently rank well, AGIS's assessment of whether the Allianz fund's investment process is currently out of favor in the markets and is only temporarily underperforming due to factors outside the portfolio manager's control
- The availability of complementary investment processes, e.g. quant vs. fundamental
- AGIS's assessment of the Allianz manager's ability to generate consistent and positive alpha over time

For third party funds:

- A single "best option" 3rd party fund for each asset class, based on:
 - Manager's ability to generate consistently positive alpha at an acceptable risk level
 - Diverse investment processes when combined with selected Allianz fund(s)
 - Managed by a firm with robust risk management
 - Being offered by a fund complex attractive in the advisor 529 space
- Alternative choices will be available in the event the State does not approve the initial recommendations.

For PIMCO funds:

- AGIS will choose a PIMCO fund for each asset class based on the suitability of the fund's strategy to match the assumptions for the asset class in the Ibbotson recommended asset allocations
- If no single PIMCO fund matches the requirements for the asset class, then AGIS will combine PIMCO funds to approximate

On-Going Monitoring of the MESP-Advisor Plan Investments

Once the updated plan is up and running, the Subcontractor will do the following:

- On a quarterly basis, review the performance of the underlying funds in the plan
- If a fund significantly underperforms or significant events occur then we will consider adding to the watch list.
 - (no longer applies) Examples of significant events are:
 - Portfolio manager changes
 - Unexpected performance behavior
 - Unusual portfolio/risk/style characteristics
 - Unexpected changes in the firm's personnel or AUM or any other indication that brings into doubt the firm's stability
- Contact the relevant investment firm for more information and explanation about the particular issue
- Evaluate the issue in the context of the market environment and make a final decision to add (or not) to the watch list
- Communicate watch list changes to fiduciaries

Once a fund makes it on to the watch list, Contractor will review each quarter and one of the following will occur:

- Be removed from the watch list and remain as an underlying investment of the plan.
- Be dropped as an underlying investment of the Plan, due to continued deterioration of performance, consistency and overall rank.



- Remain on the watch list for review the following quarter.

2.2 Process for Analyzing Existing Investment Policy

TFI will meet with the CCI to review/analyze the existing investment policy. Consideration will be given to how this policy reflects the underlying goal of saving for college and, where appropriate, will be used as an additional input to the process described in 2.1, if the State so desires.

2.3 Method for Recommending Modifications and Monitoring the Investment Policy and Strategy

Each year, program performance and the results of the asset allocation study, supported by the rationale for recommended changes will be presented to and discussed with the CCI and Bureau of Investments.

2.4 Multi-Investment Manager Platform

The Contractor and Subcontractor, through its affiliate, AGIS, is providing the MESP-Advisor Plan an array of investment options that feature investments in underlying funds managed by multiple investment managers.

As described in response to 2.1 rigorous and consistent due diligence will be used to select these managers and funds. This approach will result in a "Best-in-Class" underlying fund line-up. The proposed age-based investment option will invest in 19 different funds from 9 different investment firms. There will also be 14 individual options with underlying funds from 8 different investment managers.

Pacific Investment Management Company LLC (PIMCO)

NFJ Investment Group L.P. (NFJ)

RCM Capital Management LLC (RCM)

Nicholas-Applegate Capital Management LLC (NACM)

ING Funds

The Boston Company Asset Management, LLC

Oppenheimer Capital LLC

Teachers Advisors, Inc.

Thornburg

2.5 Investment Options

Initial recommendations for the MESP-Advisor Plan are provided in this section. TFI will work closely with the CCI to modify the investment option line-up, underlying funds and names of the proposed investment options to provide the most beneficial program and the one most tailored to the needs of the state of Michigan and its citizenry.

*Age-Based Option*

- Safety of investment option – this option is constructed taking into consideration the changes in college costs, the age of the beneficiary and the risk of a negative return over the investment horizon. The risk level shifts from aggressive to conservative as the beneficiary grows older. Safety of principal is not the primary objective.
- Ability of investment option to track increasing costs of college education – this investment option utilizes actively managed mutual funds from several fund managers designed to automatically adjust allocations according to a beneficiary's investment time horizon.
- Share Classes – A and C. Shares do not convert.
- Start-up costs – none
- Account minimums – \$25 to open. \$5,000 annual account minimum. See Pricing Proposal for annual minimum.
- Expense ratios – ranges from 43 to 63 basis points. See chart in section 2.6 below.
- CUSIP – a CUSIP will be established upon finalization of investment options. Upon finalization of the investment options, real CUSIP numbers will be established.

Individual Fund Investment Options

This includes eleven individual fund investment options each of which invest in a single underlying fund, to allow advisor/investor customization. These underlying funds include equity and fixed-income funds covering a variety of asset classes and investment strategies. Morningstar Fund Sheets have been provided for each of the funds in Exhibit 2(a).

- Safety of investment option – varies by individual investment option. See section 2.6 below for respective option benchmarks.
- Ability of investment option to track increasing costs of college education – individual funds for investment options have been selected based on coverage of asset classes to provide choice in the construction of customized college savings strategies.
- Share Classes – A and C. Shares do not convert.
- Start-up costs – none
- Account minimums – \$25 to open. \$5,000 annual account minimum. See Pricing Proposal for annual minimum.
- Expense ratios – ranges from 43 to 107 basis points. See chart in section 2.6 for additional details.
- CUSIP – a CUSIP will be established for each option upon finalization of the respective investment option design. Upon finalization of the investment options, real CUSIP numbers will be established.

2.6 The following will be provided for each proposed investment option:

- 2.6.1 The asset allocation proposed to use and the weights recommended (which must add to 100%)
- 2.6.2 Historical investment performance data for funds proposed including comparisons to appropriate benchmarks, and various rankings such as MorningStar, Value Line, etc.
- 2.6.3 Proposed mechanism for independent rating of funds
- 2.6.4 Data on the management team expected to manage the funds, including education and experience
- 2.6.5 Historical data of similar funds including money under management, investment strategy, management style (philosophy and goals) and whether there has been any significant changes in the last 3 years

The Contractor's Investment Policy, as outlined in 2.1, provides the proposed mechanism that will be used for the independent rating of funds (2.6.3).



2.7 Asset/Liability Modeling Capability and Portfolio Structure Analysis (Manner in Which TFI Would Assist the Contract Compliance Inspector in Recommending Changes and Monitoring Asset Mix)

AGIS's Investment Policy, as outlined in 2.1, provides the proposed mechanism that will be used for the independent rating of funds (2.6.3).

2.8 TFI's process for evaluating investment performance derives from the asset allocation work. By defining the asset allocation, TFI thereby specifies benchmarks for each asset class. Each manager will be evaluated vs. their specific benchmark in the asset class in which they have been placed.

2.9 Deleted/Not Applicable



2.10 Investment and Economic Research Capabilities and How Research Is Available and/or Distributed to Clients

Each fund manager recommended for the MESP-Advisor Plan will possess different investment and economic research capabilities and distributes such information differently.

2.11 Investment Manager Research and Analysis Services

The Subcontractor's role will be in the construction of the investment options for the MESP-Advisor Plan, as outlined in the response to 2.1. The investment-related functions for the creation, implementation and continuing operation of the Advisor Plan, including the formulation of the investment options, the selection of the underlying funds and the allocations to the underlying funds have been and will be performed by AGIS, an AGID affiliate.

- 2.11.1 Number of managers by asset class and style: AGIS group has three members
- 2.11.2 Other information maintained on each: For the Subcontractor's distributed funds the group has access to daily holdings and performance.
- 2.11.3 Manner by which information is obtained: For the Subcontractor's distributed funds the holdings data is from the fund custodian and performance from the AGI US Retail performance reporting team. This data will be stored in a database at a data warehouse and also in Factset. For 3rd party funds periodic holdings and performance is from Morningstar Direct.
- 2.11.4 How often is information updated: Daily.
- 2.11.5 Type of database used including number of years of usable data on managers and tracking of clients, and whether the database is proprietary or purchased from an affiliated entity, or a non-affiliated vendor: For the Subcontractor's distributed funds the group has access to extensive databases of information including daily holdings and daily performance. For 3rd party funds Morningstar Direct, Lipper LANA and Informa PSN are used.
- 2.11.6 Number of firm personnel devoted to such services by asset class and style: The team is comprised of three members.
- 2.11.7 Number of investment consultants in the firm: The team is comprised of three members.
- 2.11.8 Approach to and due diligence for evaluating managers: Qualitative and quantitative analysis will be used to evaluate managers. Quantitative will be used initially to screen out undesirable managers, and then rank the remainder. Professional judgement will be used to reduce the list of possible managers to a manageable number.
- 2.11.9 Methodology for analysis of manager performance, including establishing benchmarks, and the source and size of the universe (number and size of plans and number of which are public plans): The approach to due diligence revolves around the population of the age-based portfolios with fund managers. There will be stand-alone options in the plan, but these will be selected based on the process outlined in 2.1 and 2.7.. Benchmarks will be selected for funds using the appropriate index which the manager measures the portfolio against..

2.12 Knowledge and Experience in Specific Asset Class(es) or Strategy Including Private Equity, Real Estate and Alternative Investments

The Contractor's approach provides for a platform whereby any fund family can be incorporated into the program (after meeting criteria defined in 2.1).

2.13 Educational Programs Developed or Made Available to Clients and/or Account Owners

AGID will offer a variety of educational programs both for advisors and their clientele that focus on saving for college. A number of these would be customized for the MESP-Advisor Plan. These include but are not limited to the following:



Materials	Description	Target Audience
Client Brochure	Overview of benefits of 529 plans.	Client Use
FA Product Profile	Provides an overview of the 529 plan as well as detailed product overview including portfolio allocations and investment options.	Financial Advisor Use Only
Estate Planning Piece	Overview of the benefits a 529 account can provide for a clients estate planning needs.	Client Use
College Savings Plan Demystified	Q&A on common questions relating to 529 plans.	Client Use
Performance Handout	Provides performance on all investment options.	Client Use

Seminar Presentation	Overview of the benefits of 529 Plans in saving for a child's college education.	Client Use
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In addition the Subcontractor will offer other programs to support advisor efforts. Examples have included::

A Journey Through Economic Times

Communication Skills for Making Business Personal

Understanding the Green Investing Opportunity

Market Intelligence

Partnering for Success with Referrals

2.14 Deleted/Not Applicable

2.15 Method for Recordkeeping and Account Maintenance to Ensure the Following:

2.15.1 Separate Accounting for Each Account Owner and Beneficiary

Each account owner and beneficiary relationship will have a unique account number assigned at the time the account is established. This same account number will be used for each investment option in that relationship so the total account contributions and earnings are aggregated and reported on the quarterly statements. Both self-service functionality on our program websites and transaction specific forms will be provided to make managing a 529 plan easy and convenient for an account owner.

The record keeping platform for the MESP-Direct Plan utilizes the systems of Boston Financial Data Services (BFDS) and its parent company DST to support and service processing. The same model will be applied for the MESP-Advisor Plan, with modifications to accommodate the financial advisor and separate unit classes, as appropriate. BFDS utilizes a highly integrated information system infrastructure, consisting of an account owner and record keeping database (DST's TA2000) and an Automated Work/ Distributor (AWD) process to support both manual and on-line account processing. The core system, TA2000, provides transaction processing for account owners with account maintenance capabilities. The AWD process includes image processing and customer service workstation capabilities.



2.15.2 Contributions Do Not Exceed the Maximum Allowed under PA 161 and IRC Sec. 529 (Including Any MET Contracts Purchased for an Account Beneficiary or Direct-Sold MESP Accounts)

The maximum amount that a beneficiary may have deposited in his/her behalf, whether it be MET or either of the MESP plans is \$235,000. Any contributions that result in the sum of all MESP accounts opened for a beneficiary being in jeopardy of exceeding the maximum contribution limit must be reflected on a next day control report and reviewed by BFDS and TFI on a daily basis. If the maximum is exceeded, a telephone call must be placed to the account owner to confirm their intent and determine if the excess contribution can be used for an alternate beneficiary in the Program. If not, the portion of the contribution that would cause the total account balance for the MESP Account(s) of that beneficiary receiving the contribution to exceed the maximum account balance limit must be rejected and returned.

Since the launch of the MESP-Direct Plan, The Contractor has developed a systematic file transfer of data from the state to the Contractor via secure FTP for aggregation purposes on a daily basis. The Contractor transmits a daily file containing only those beneficiaries whose account balances are \$180,000 or more. It is anticipated that the State will continue to be responsible for disallowing purchases of MET contracts for beneficiaries where the purchase will cause the total MESP and MET account balance to exceed the maximum threshold limit.

2.15.3 Safe and Convenient Methods to Open an Account and Make Deposits, Including Electronic Transfer Debits, Payroll Deduction, and Checks

Account opening of the MESP-Advisor Plan will only be possible through a financial advisor completing the application and submitting it to BFDS where it will be processed and the advisor will be recorded on the account as part of the account opening.

The account application will indicate whether the account owner has authorized the advisor to transact business on the account owner's behalf.

New accounts may be funded through: an Electronic Funds Transfer (EFT); establishment of an Automatic Contribution Plan (where the customer's bank account would be debited on a periodic basis); payroll deduction if the employer has signed up to participate; or through remittance of a check.

Additionally, Account Owners can make subsequent purchases via check, remittance stub, and FAN-WEB, or telephone. In addition, they can establish, change or terminate an Automatic Contribution Plan; or add a banking account or update their banking information via manual form, FAN-WEB or telephone.

DST's Fan-Web (Financial Access Network) (FAN-Web™) provides a state-of-the-art, secure transaction environment. Access is based on password requirements and transaction rules established for the Program. FAN-Web™ provides full encryption to ensure a high level of data security. This system continues to be used for the MESP-Direct Plan.

2.15.4 Method of Providing the Michigan Department of Treasury Online Access to Account Information [Preferably Terminal Emulation (TN3270) or Web-Browser Based]

The CCI will be provided with on-line access to Vision for inquiries with respect to customer account information. Vision, introduced in 1998, provides complete client account access on a daily basis. Vision provides real-time, reliable information for MESP-Direct Plan accounts through a web-browser based site. This on-line access is the same used for the MESP-Direct Plan.



2.15.5 Compliance with Annual Certified Public Accountant Audit and Periodic Audit Requirements Including Computer Systems

PricewaterhouseCoopers will audit all aspects of 529 Program administration, including the computer systems used to administer the MESP-Advisor Plan, as they are currently used for MESP-Direct Plan.

2.15.6 Method of Ensuring that Qualified Withdrawals Are Made Timely Either by Check Directly to an Eligible Educational Institution, Jointly to a Beneficiary and Postsecondary Educational Institution or Directly to an Account Owner upon Receipt of Appropriate Documentation of Expenses

Service Level Agreements (SLA) will be established with BFDS for the MESP-Advisor Plan using the same technology and processes creating an expectation that qualified withdrawals will likewise be made on the same timely basis as with the MESP-Direct Plan. SLA's will closely follow the processing standards that are established under 6.0 and results will be reported in a quarterly management report. The redemption process allows for distributions to be sent to the account owner or directly to an institution of higher education. This process captures recipient information as well as distribution types, which is reflected in the account history and visually verified during the BFDS's quality control process. At the end of the year, this information will be reported on tax form 1099Q.

2.15.7 Method of Allowing Transfer of Accounts to Immediate Family Members of the Beneficiary as Defined in IRC Sec. 529

An account owner must submit a Change Form which will be available for downloading from the MESP-Advisor Plan website, requested from the Customer Contact Center or from the financial advisor. A transfer of funds between MESP Accounts or between a MESP Account and an account in another qualified tuition program is a non-taxable event and will not be subject to the Additional Excise Tax if the beneficiary of the account to which funds are transferred is a "member of the family" of the Beneficiary being replaced, or if the account to which funds are transferred has the same beneficiary and there has not been a transfer to any qualified tuition program for the benefit of that Beneficiary within the previous 12 months.

2.15.8 Method for Providing On-line Inquiry to Allow Treasury the Ability to Validate a Claimed Income Tax Deduction

The CCI must have access to view contributions and withdrawal (both qualified and non-qualified) information for the MESP-Advisor Plan on-line through Vision.

2.16 The advisor-sold MESP must allow fund transfers from other Michigan 529 plans at net asset value (NAV) with no sales load on transferred amount. Commissions on 529 plan rollovers will not be allowed except for rollovers from non-Michigan 529 plans.

2.17 Process for the Distribution of Qualified Withdrawals in Accordance with PA 161 and IRC Sec. 529

At the direction of the Account Owner, or the financial advisor if so authorized on the account application by the Account Owner, distributions may be paid in one of three ways: (1) directly to the Eligible Institution, (2) in the form of a check payable to both the Beneficiary and the Eligible Institution, or (3) in the form of a check payable to the Beneficiary or Account Owner. It is the responsibility of the Account Owner to substantiate any expense claimed on federal and state tax returns as a Qualified Higher Education Expense in the event of audit. The Contractor will process financial transactions received in good order on the day of receipt. Checks are mailed within two days of processing. The Contractor must have the ability to send the payment via check or electronic funds transfer.

2.18 Process to Aggregate Advisor-Sold and Direct-Sold MESP Accounts

As mentioned in the above section 2.17, contributions will be aggregated to monitor compliance with maximum account balance limits. They will also be used to calculate earnings for tax reporting purposes.



2.19 Account Ownership, Account Contributors and Successors of Accounts As It Relates to Multiple Accounts for the Same Beneficiary

An individual Account Owner may designate a Contingent Account Owner to become the owner of his/her Account in the event of death. The Account Owner may also change ownership of all or a portion of his/her Account, without incurring a State or federal tax liability, including the Additional Excise Tax, to another individual or entity that is eligible to be an Account Owner in the MESP-Advisor Plan.

2.20 Payment Options (Such As Monthly Contributions by Check and Remittance Stub, Automatic Clearing House (ACH), Payroll Deduction, Web-based, etc.) Available for Account Owners to Make Initial and Subsequent Contributions

Initial contributions at the time of account opening must be done in accordance with the advisor's submission of the application and are typically via check payable to the program.

The system currently employed for the MESP-Direct Plan, which will be used for the MESP-Advisor Plan, TA2000, supports many types of purchase processing. Purchases may be designated as asset transfers, Automated Clearing House (ACH), fiduciary contributions, direct purchases, purchases by federal funds wire, , or confirmed purchases. Some of the purchases processing features are highlighted below.

- Investments can be indicated as immediately collectible (good funds)
-
- Banking instructions are available for viewing and selection from the transaction entry window for ACH trades
- • Future trade dates (if permitted by fund) can be entered

The minimum amount necessary to open an account in each investment option will be \$25 per section 2.5. An account maintenance fee of \$25 will be assessed annually on accounts with a balance of less than \$5000.

- 2.20.1 If electronic payments (e.g. ACH, credit card, etc.) are available via the Internet or other channels, the Contractor must process payments by interfacing with the State's Centralized Electronic Payment and Authorization System (CEPAS) through a standard Application Program Interface (API). CEPAS is the State's electronic commerce centralization initiative to provide a single payment processing and authorization system that integrates electronic receipt of credit card and Electronic Check (E-Check, otherwise known as ACH) transactions (see Attachment B, CEPAS Brochure).

The payments contemplated as part of MESP-Advisor Plan do not involve payments to the State of Michigan or to any of its agencies or political subdivisions. If necessary TFI and AGID will work with the Department of Treasury to develop a system that complies with the laws and regulations that govern broker-dealer transactions.

If such an interface would become necessary in the future, an assessment would take place at that time.

2.21 Payment Posting Process for Account Owners and When Earnings Accumulate

All contributions received in good order will be processed on the day of receipt. Earnings begin to accumulate the following business day and are reflected in the Trust Unit Value of each investment option. If processing is delayed, the account owner will receive the trade date when the funds were received in good order.



2.22 Procedures to Prevent Excess Contributions to Beneficiary Accounts Allowed by MESP in Compliance with PA 161 and IRC Sec. 529

2.22.1 How and When TFI Will Determine If Account Owners Have Made Excess Contributions

Any contributions that result in the sum of all Michigan accounts opened for a beneficiary being in jeopardy of exceeding the maximum contribution limit are reflected on a next day control report and reviewed by BFDS and the Contractor on a daily basis. If the maximum is exceeded, a telephone call will be placed to the account owner and/or Broker to confirm their intent and determine if the excess contribution can be used for an alternate beneficiary in the Program. If not, the portion of the contribution that would cause the total account balance for the MESP Account(s) of that beneficiary receiving the contribution to exceed the maximum account balance limit will be rejected and returned.

Since the launch of the MESP-Direct Plan, a systematic file transfer of data has been developed from the State to the Contractor via secure FTP for aggregation purposes on a daily basis. The Contractor transmits a daily file containing only those beneficiaries whose account balances are \$180,000 or more. The State will continue to be responsible for disallowing purchases of MET contracts for beneficiaries where the purchase will cause the total MESP and MET account balance to exceed the maximum threshold limit.

2.22.2 How AGID Will Notify the Account Owner and/or Broker

A client service team member responsible for the State of Michigan relationship would notify the account owner's financial advisor of any excess contributions, and any option to rectify the matter. BFDS will work with the Contractor and Subcontractor on a case-by-case basis to notify the shareholder and obtain instruction on whether to return their excess contribution deposited into another 529 plan

2.22.3 Coordinate this Compliance with the MET program and Direct-Sold MESP (see above section 2.22).

2.23 How BFDS Will Prevent an Account Owner from Opening Multiple Accounts for the Same Beneficiary

The processing system, DST TA2000, does not allow an account owner to open more than one account in MESP Advisor for the same beneficiary. Each account owner and beneficiary relationship has a unique account number assigned to it at the time the account is established. If the account owner and beneficiary social security number combination already exists in the system, then the system will reject attempts to create a new account number for that account owner/beneficiary combination. (Please note, however, that the same account owner/beneficiary combination is permitted to have an account in MESP Direct.)

2.24 How BFDS Will Maintain Account Data to Ensure that the Current Accumulated Contributions and Accumulated Earnings for Each Account Owner Are Available on a Daily Basis and How Accumulated Earnings Will Be Determined

Account owners will be able access their account information via statements, telephone, and through the MESP Advisor website, which will take the account owner to the DST Fanweb system. CCI will be able to access this information via BFDS's Vision system.

When there is a distribution from MESP Advisor, all investment options in MESP Direct and MESP Advisor with the same account owner/beneficiary combination will be considered as one account and aggregated for the purpose of calculating the earnings portion, if any, of the distribution.



2.25 State Street will be responsible for conducting trades of the underlying mutual funds in the Plan. There will be 9 different investment firms who shall each conduct their investment management practice according to their normal business practice [subcontractor clearing the investment trades (handling back-office) and the related system(s)].

2.26 Deleted/Not Applicable.



- 2.27 Copies of all regulatory filings and reports related to the advisor-sold MESP or investment options offered under this Contract will be provided to the CCI. This does not apply to confidential filings or reports unless the filings or reports are related to or a part of the advisor-sold MESP or investment options offered.
- 2.28 Contractor will provide the results of all periodic examinations by any state or federal banking, insurance, or securities commission related to the MESP-Advisor Plan and its investment options to the CCI, except to the extent that the report or reports are not required to be disclosed under state or federal law.
- 2.29 Contractor will provide an annual audit of the advisor-sold MESP by a firm of certified public accountants. The audit report must be provided to the CCI.

2.30 Disclosures

- 2.30.1 The Contractor will not recommend money managers to clients or otherwise mention money managers to clients for consideration.
- 2.30.2 Neither the Contractor nor a related company will receive any payments from any of the recommended money managers that the Contractor recommends, considers for recommendation, or otherwise mentions to clients for consideration.

Neither the Subcontractor nor a related company will receive any payments from any of the recommended money managers that the Contractor recommends, considers for recommendation, or otherwise mentions to clients for consideration.

- 2.30.3 Neither the Contractor nor any personnel will receive any finder's fees from any affiliated entity, investment manager or third party.

Neither the Subcontractor nor any personnel receive any finder's fees from any affiliated entity, investment manager or third party.

- 2.30.4 The Contractor will not pay any finder's fees to any affiliated entity, investment manager or third party.

The Subcontractor does not pay any finder's fees to any affiliated entity, investment manager or third party outside of normal fees associated with our mutual funds which are fully disclosed.

The Subcontractor does not pay any finder's fees to any affiliated entity, investment manager or third party. The reference to "normal fees" refers to the fees associated with the MESP-Advisor Plan and those fees are set forth in Attachment A-Price Proposal.

- 2.30.5 The Contractor's Code of Ethics ("Code of Ethics"), adopted pursuant to the Investment Advisers Act of 1940, as amended, describes the policies regarding conflicts of interest. The Code of Ethics clearly states that all supervised persons are fiduciaries with respect to client portfolios, including all tuition plans managed by the Contractor. Under the Code of Ethics, the Contractor's supervised persons are required to conduct personal securities transactions in such a manner as to avoid any potential or actual conflicts of interest. The Contractor has not implemented policies and procedures with regard to conflicts that might arise with recommended money managers because the Contractor does not make recommendations of money managers to clients.

- 2.30.6 Deleted/Not Applicable

- 2.30.7 Deleted/Not Applicable

- 2.30.8 There are no such arrangements with broker-dealers under which TFI or a related company will benefit if money managers place trades for their clients with such broker-dealers.



- 2.31 Tax deductions for contributions made before April 15 on behalf of prior tax year are not allowed; additionally, tax deduction carry-forward for people contributing more than the deductible amount in a tax year are not allowed, and these regulations will be accurately presented in all materials and communications..

The annual statement for a given calendar year will provide the total of all contributions made during that calendar year.

3.0 Customer Service

- 3.1 Provide Effective Customer Service and How TFI Will Implement, Track, and Measure Effectiveness of Brokers and Satisfaction of Account Owners

BFDS will be utilized to handle customer service.

The primary functions within the Call Center include inquiry, trade processing and research. The MESP-Advisor Plan participants and their financial advisors can be assured of a customer service experience that is pleasant, accurate, and efficient.

The Call Center will tailor telephone scripts and defines standards to meet the MESP-Advisor Plan's unique features and best reflect the State's image and culture. BFDS meets or exceeds the processing standards required by the regulatory agencies of the mutual fund industry. DALBAR and/or NQR will also be utilized as a means to support clients' measurement of a customer services experience.

3.2 Call Center Operations

- 3.2.1 A toll free number will be provided.
- 3.2.2 Deleted/Not Applicable
- 3.2.3 Customer Service Representatives will be engaged to service the MESP-Advisor Plan, as well as other mutual fund functions.
- 3.2.4 Interactive Voice Response (IVR) system functionality: A toll-free number with voice instructions and enable callers to retrieve account information at times that are convenient to them. Inquiry capabilities are supported through BFDS's IVR features. BFDS' Voice features are integrated with TA2000 in real-time, offering immediate update and information retrieval capabilities.
- 3.2.5 Deleted/Not Applicable
- 3.2.6 Deleted/Not Applicable
- 3.2.7 Supervisors' review of phone calls: Independent of DALBAR and/or NQR, The Subcontractor has internal quality programs at BFDS that are built on the principles of DALBAR and/or NQR. Calls will be monitored with feedback given. The local management team will administer this program. Within the Call Center, there will be Dedicated Coaches who will assist the managers with monitoring calls. Managers formally will meet with customer service representatives monthly to review their performance and to jointly review calls.
- 3.2.8 Hours and days available for phone calls: 9am to 6pm EST, Monday through Friday when the NYSE is open.

3.3 Customer support teams will be available any day the NYSE is open for responding to letters and e-mails.

- 3.3.1 Average response time for responding to letters and e-mails: SEC guidelines and turnaround standards will be followed. Responses to correspondence will range from 2-10 days based on work type.



3.4 Percentage (%) of Issues/Problems Satisfactorily Resolved from the Account Owners' and Brokers' Perspective

All research related calls via the Contractor's AWD workflow system will be tracked and monitored in an effort to understand first call resolution efficiency.

3.5 Method and Frequency of Communicating to the CCI Account Owners' Concerns and Comments

The CRM tool, AWD, will automatically create a work item for each call or transaction and allow the service center's representatives to categorize the item. From this database, the representatives can route calls to the responsible personnel where they will be reviewed and then forwarded to the State. This will be done on the same frequency as with the MESP-Direct Plan.

TFI plans to report this information for the MESP Advisor Plan on a quarterly basis.

3.6 Have or Maintain a Michigan Based Office, and Site for the Provision of On-site/In-person Customer Service

3.7 Participant Online Tools for Brokers and Account Owners

The internet solution offered for the MESP-Advisor Plan, FAN Web, supports over 170 mutual fund Web sites. As may be mutually determined by the Contractor, the State and AGID, participants and/or their advisors will have access to the functionality identified below:

Inquiry

- Current account balance and view transaction history or portfolio
 - Historical account balance by date
 - Personalized performance at the account level
 - Purged history
 - Financial intermediary and representative information
 - Prior year's tax data
 - Year-to-date tax data
 - Bank instructions on ACH/wire transactions
 - Address information
 - Cancelled and pending trades
 - Electronic statements
 - Electronic tax forms
 - Electronic confirms
- * Implementing these functions requires integration with your print vendor

A secure sign-on Web access tool will enable broker/dealers and financial advisors to view fund, participant account, and book-of-business information. Additionally, intermediaries, such as financial advisors, will be able to perform account maintenance.

3.8 The MESP-Advisor Plan will have a program disclosure booklet that will provide disclosure of §529 program information that an account owner or inquirer needs in order to make an informed decision about program participation. The Contractor adheres to the College Savings Plan Network Disclosure Principles Statement No. 2 (2005), and complies with all FINRA, State of Michigan, and Federal policies, regulations, and laws. Contractor will disclose in writing to each account owner or any other person who requests information on the advisor-sold MESP the following information:

- 3.8.1 The terms and conditions for establishing an education savings account
- 3.8.2 Restrictions on the substitutions of designated beneficiaries and transfer of account funds
- 3.8.3 The person or entity entitled to terminate a Michigan education savings program agreement
- 3.8.4 The period of time during which a designated beneficiary may receive benefits under the Michigan education savings program agreement



- 3.8.5 The terms and conditions under which money may be wholly or partially withdrawn from an account or the program, including, but not limited to, any reasonable charges and fees and penalties that may be imposed for withdrawal
- 3.8.6 The potential tax consequences associated with contributions to and distributions and withdrawals from accounts
- 3.8.7 Investment history and potential growth of account funds and a projection of the impact of the growth of the account funds on the maximum amount allowable in an account
- 3.8.8 All other rights and obligations under Michigan education savings program agreements and any other terms, conditions, and provisions of a contract or an agreement entered into under this act.

4.0 **Marketing**

4.1 Marketing Plan for the Advisor-Sold MESP

AGID's marketing plan will build from its current footprint in the state of Michigan which includes selling agreements with large wirehouse firms, "Independent" firms, Bank Broker Dealers and Insurance Companies. AGID will have four individuals dedicated to Michigan, who, on a full-time basis, serve as distribution agents known as "wholesalers". Two reside in the State and two serve as "internal wholesalers" working from AGID headquarters in New York.

Every licensed brokerage office and individual in the State will be invited to enter into a selling agreement for the MESP-Advisor Plan and, thus will be able to offer it.

AGID will coordinate with the home office of each selling broker-dealer firm to communicate the benefits of the MESP-Advisor Plan to each of its advisors within the State using the Contractor's own communication channels, including regular emails and conference calls with advisors. Next, the individual at each selling broker-dealer who is responsible for advisors in the region that includes the State will be provided with all the information necessary to fully convey the features and benefits of the MESP-Advisor Plan.

The State will leverage its existing 529 college savings brands. By building from the existing successful MESP-Direct Plan as opposed to creating a new stand-alone brand, the MESP-Advisor Plan will better generate recognition, acceptance, and asset accumulation. As such, the Contractor will use the MESP brand as the one for Michigan's 529 college savings plans and sub-branding for the Direct and Advisor Plans.

While these are recommendations for promotion of all three plans, you will see that our marketing and distribution strategy for the MESP Advisor-Plan will reach across the state to engage brokers and advisors, many of whom are currently using 529 advisor plans for their client's college savings needs. One of our goals for Michigan is to "repatriate" Michigan savings to a Michigan-based program – and to grow MESP-Advisor through its best-of-class offerings and the beneficial brand recognition built over the past nine years.

4.2 The State prefers to grow assets on a state-level versus a national level. The goals of the offering will be to reach Michigan residents and clients of Michigan-based advisors and so it is not planned to market and distribute the MESP-Advisor Plan nationwide.

4.3 Marketing materials should be broad enough to include MET and other postsecondary education finance options offered by the State. Current programs include Merit Award, Michigan Higher Education Assistance Authority, and Michigan Higher Education Student Loan Authority. Marketing materials at a minimum should include but not be limited to the following:

- 4.3.1 Advisor-sold plan logo (logo must be unique and distinct from the direct-sold MESP)
- 4.3.2 Program brochures
- 4.3.3 Advisor-sold plan application for potential account owners which must include but not be limited to:



- 4.3.3.1 Name, address and social security number, taxpayer identification number or federal employer identification number of the account owner
- 4.3.3.2 A designated beneficiary
- 4.3.3.3 Name, address and social security number or taxpayer identification number of the designated beneficiary
- 4.3.3.4 Any other information that the Contract Compliance Inspector or Contractor considers necessary.

Marketing materials as described above will be developed working carefully with the CCI.

With respect to the Program Brochures and Agreement AGID will work to develop material that reflects The Contractor's experience in the Michigan market combined with AGID's experience in working with advisors. All materials will be presented to the CCI for approval.

- 4.4 The CCI will approve the marketing plan/materials before the plan is implemented.
- 4.5 MET and direct-sold MESP will be disclosed to account owners and potential clients in accordance with Financial Industry National Regulatory Authority (FINRA) and Municipal Securities Rulemaking Board (MSRB) rules.
- 4.6 Web site development, maintenance and administration will include but not be limited to (also see section 1.022.5, System Capabilities):
 - 4.6.1 Specific advisor-sold MESP information (i.e. enrollment information, investment/fund performance, fees, etc.) or by calling shareholder services.
 - 4.6.2 Ability to request and have available on the website program agreement and materials
 - 4.6.3 Customer service information to include business hours (time zone), toll free phone number, regional office and representative as well as included in marketing materials
 - 4.6.4 Historical and current company profile, i.e., years in business, assets under management and if appropriate biography of fund manager(s). This information will be updated quarterly.
 - 4.6.5 Secured access by account owner and CCI or designee to specific file or reporting data. Access rights will be defined by the CCI.
 - 4.6.6 Ability to capture number of hits to advisor-sold MESP web site. This information will be provided on a periodic and timely basis.
 - 4.6.7 Direct link to MET, Treasury related web sites and language about the direct-sold MESP. Link to MET and language about the direct-sold MESP must be on web site homepage
 - 4.6.8 Compliance with industry standards for web site requirements
 - 4.6.9 Compliance with "Look and Feel Standards for e-Government Applications" at http://www.michigan.gov/documents/Look_and_Feel_Standards_2006_v3_166408_7.pdf: TFI and AGID will work with the CCI to ensure that the MESP-Advisor Plan website will reflect any necessary requirements in this document while at the same time being responsive to the unique needs of the advisor.

The Contractor will provide services for the Advisor-sold Michigan Education Savings Program, then, under the Contract, it would be responsible for those services and any subcontractors (e.g. sections 4.6.5, 4.6.6, 4.6.7, etc.).



4.7 Outreach Presentations/Meetings, Including Employer Outreach Meetings

The Contractor will work closely with the CCI with respect to outreach presentations and meetings that involve the MESP-Advisor Plan. The Contractor will invite a MET representative to participate in virtually all of the outreach presentations and meetings that they conduct, including outreach meetings with employers. In addition MET is invited to participate in many of the Contractor's community outreach efforts as well as in work with partners. The Contractor's Program Manager or designee will continue to be responsible for coordinating outreach presentations on a regular basis with the CCI.

To the extent that there are outreach presentations/meetings related to the MESP-Advisor Plan, the CCI will be notified.

4.8 Deleted/Not Applicable

4.9 Marketing Materials Submitted to the FINRA and/or the MSRB When Review Not Required and Lead-Time for Approval of Marketing Materials

Generally marketing materials will not be submitted to the FINRA and/or the MSRB when review is not required. On occasion, for firms with significant distribution capabilities, materials may be submitted upon their request.

If review of marketing materials is required by FINRA and/or the MSRB, then approximately two additional weeks will need to be built into the project plan for those materials.

5.0 Systems Capabilities

5.1 Other Contractors:

The advisor-sold MESP Contractor will be responsible for working with the State and other contractors (e.g. MET, Department of Information Technology, direct-sold MESP, etc.) to assist in problem resolutions including but not limited to, establishing new communications channels, downtime, testing, etc. At minimum, a daily interface will be required between the Contractor and State for daily account balances.

5.2 Process to Provide Additional Data Interfaces

Each interface is different and would be need to be scoped out as such. Depending on the size of the files and frequency of the data exchanges a variety of methods could be used to exchange the data. The method that would be established to transmit data between tThe Contractor and MESP would be through the use of File Transfer Protocol (FTP). Data exchanged through this method is typically encrypted and exchanged across secure servers.

5.3 Data Recovery (System Recovery and Disaster Recovery)

The Contractor and Sub Contractor have a disaster recovery plan in place.

5.3.1 The Contractor will back-up data at least daily.

5.3.2 System recovery time is 0-4 hours after a disaster.

5.4 Deleted/Not Applicable

5.5 Deleted/Not Applicable



5.6 Data and System Security

5.6.1 The following national/international security standards and publications including, but not limited to, must be adhered to:

- 5.6.1.1 "Special Pub 800-12 – An Introduction to Computer Security: The NIST Handbook", National Institute of Standards and Technology, Computer Resource Security Center (see <http://csrc.nist.gov/publications/nistpubs/800-12/>)
- 5.6.1.2 Interagency Guidelines Establishing Standards for Safeguarding Customer Information; Final Rule (12 CFR Part 30, et al)
- 5.6.1.3 The Department of Health and Human Services and the Department of Social Security Administration (Section 45d(1)(6) of the Social Security Act and Privacy Act U.S.C. 552)
- 5.6.1.4 Social Security Number Privacy Act 454 of 2004 at [http://www.legislature.mi.gov/\(S\(10pb4a45o4zpgi55sisvcuuu\)\)/documents/mcl/pdf/mcl-act-454-of-2004.pdf](http://www.legislature.mi.gov/(S(10pb4a45o4zpgi55sisvcuuu))/documents/mcl/pdf/mcl-act-454-of-2004.pdf)
- 5.6.1.5 Identity theft acts (452 of 2004 and 566 of 2006) at <http://www.legislature.mi.gov/documents/2003-2004/publicact/pdf/2004-PA-0452.pdf> and [0566.pdf](http://www.legislature.mi.gov/documents/2003-2004/publicact/pdf/2004-PA-0566.pdf).

5.6.2 The Contractor must provide the physical and logical system access controls and security necessary to ensure secure access for the functions described in this contract. Physical and logical access controls for all facilities, equipment, and applicable systems must be addressed. The following security control requirements must be addressed:

5.6.2.1 Management Controls

- 5.6.2.1.1 Risk Assessment of operational and technological risks, including threat identification:
- 5.6.2.1.2 System Life Cycle Management
- 5.6.2.1.3 System Security Certification:
- 5.6.2.1.4 System Security Accreditation and Assurance:
- 5.6.2.1.5 System Security Plans:

5.6.2.2 Operational Controls

Security Department maintains and enforces policies and processes to ensure that requirements for security are followed within operational procedures, especially those that relate to access management, change control, helpdesk procedures, day-to-day infrastructure management, etc.

5.6.2.2.1 User Administration, e.g., User Account Management, Password Management, etc.: Requests for granting and revoking access to the book of record data is handled by a dedicated Data Security Administration team. Access requests are created as tickets and are processed through a work queue. Access is revoked upon termination within 1 business day and access is reviewed on a quarterly basis.

Network access is controlled by network login using active directory and group policy, and user administration here is carried out between our helpdesk and LAN administration team. Strong (two-factor) authentication is being rolled out for many business areas for login within a single-sign-on scenario. Password policies are as follows.

Must be a minimum of 8 characters
Must contain at least 2 of the following:

- alpha, numeric
- special characters
- upper and lower case.



- 5.6.2.2.2 Separation of Duties
- 5.6.2.2.3 Personnel Security: Personnel are thoroughly screened before employment, including credit checks, criminal background checks and reference checks.
- 5.6.2.2.4 Security Awareness, Training, and Education:
- 5.6.2.2.5 Contingency Planning, i.e., Business Continuity and Disaster Recovery Plans:
- 5.6.2.2.6 Security Incident Handling:
- 5.6.2.2.7 Physical & Environmental Security:
- 5.6.2.2.8 Configuration Management:
- 5.6.2.2.9 Media Protection, e.g., Media Labeling, Media Storage, Media Transport, Media Sanitization, etc.:
- 5.6.2.2.10 System Security, e.g., Malicious Code Protection, Intrusion Detection Tools and Techniques, Spam and Spyware Protection, Security Alerts and advisories, etc.:
- 5.6.2.2.11 Data Security, e.g., Data Input Restrictions, Data Processing Error Handling, Data Output Error handling, etc.:

5.6.2.3 Technical Controls

- 5.6.2.3.1 Identification and Authentication Methods:
- 5.6.2.3.2 Logical Access Controls, i.e., a technical means of controlling access:
- 5.6.2.3.3 System and Communication Protection, e.g., Security Function Isolation, Denial of Service Protection, Transmission Integrity and Confidentiality, Intrusion Detection etc.:
- 5.6.2.3.4 Change Control:
- 5.6.2.3.5 Cryptographic Technologies:
- 5.6.2.3.6 Audit Trails:

5.6.3 Web Application Security

The Contractor must establish adequate security controls for web application(s) to provide a high level of security to protect confidentiality of data transmitted over the public Internet. At no point will the data be unsecured in transit. The controls include, but are not limited to:

- Authentication
- Authorization and access control
- Web application and server configuration (e.g., patch management, deletion of unnecessary services, separation of the operating system and the web server)
- Session management (e.g., randomly generate unique session IDs, encrypt sessions, enforce session expiration date, establish time-out setting for inactive session)
- Input validation (e.g., avoid shell commands, system calls, and malicious codes),
- Encryption (e.g., protect confidential or sensitive information, encryption keys, passwords, shared secret),
 - The system shall use SSL (128 bit or higher) for secure communication between the user's browser and the system. SSL will be utilized for:
 - Log-on process (authentication information -UserID and passwords)
 - Specific field in the HTML forms and links (URLS) within the pages.
 - Cookies
 - Session id
 - Confidential and sensitive data files
 - Encryption keys, certificates, and passwords
 - Audit log file.
- Audit logs (e.g., all authentication and authorization events, logging in, logging out, failed logins).

5.6.4 Ensure Confidentiality of Account Owner Records:



5.6.5 Contractor will provide security protecting the account owner's personal and financial information from unauthorized use and theft. Account owner information is of high sensitivity and high security level. The Contractor's solution will be subject to review by the Michigan Department of Information Technology's Office of Enterprise Security and Michigan Department of Treasury, Office of Security. Security protecting personal and financial information includes, but is not limited to; SSN, transmission, software, hard copy & Internet-based reporting. The Contractor will develop a "security threat matrix" explaining what safeguards will be put in place to mitigate security threats that arise when an organization handles transactions. This matrix will include the following components 1) targeted system, 2) results expected, 3) security threat, 4) mitigation strategy, 5) probability of occurrence and 6) identify any residual threat remaining. The security threat matrix will be developed after Contract implementation.

5.6.5.1 Security Technology to Ensure Data Security:

5.7 Hosting Requirements

5.7.1 Web site hosting will operate 24 hours a day, 7 days a week and must be available 99% of the time.

5.7.2 The system response time for the end-user should not be excessively long. Data must populate within ten (10) seconds, and reports must populate within one (1) minute. Normal process times of proposed system for processing performed in Contractor controlled facilities. The size and complexity of any individual report will impact delivery time and could extend the timeframe past one minute in some cases.

5.7.3 All standard system upgrades will be provided at no additional cost during the term of the Contract. If the State requests functionality that requires upgrading, additional costs may apply.

5.7.4 Any modifications to the system must be transparent to users and not require any updates on users' computers.

5.7.5 Deleted/Not Applicable

5.7.6 Deleted/Not Applicable

5.7.7 The Contractor must notify the Contract Compliance Inspector seven days in advance of any scheduled downtime.

5.7.8 All system outages/shutdowns must be reported immediately to the Contract Compliance Inspector or designee. Within 24 hours of problem resolution and restart, the Contractor must prepare and submit a report to the Contract Compliance Inspector or designee indicating elapsed downtime hours, start/end timeframes, reason for the outage, impact on the systems (lost data, etc.) for each occurrence and resolution to mitigate future occurrences.

5.8 In the event of Contract expiration or termination, all system data, accounts and assets related to this Contract must be provided to the Contract Compliance Inspector or designee within five business days of request in a commercially useable format.

TFI and AGID will work with the new provider to provide the required data for the deconversion. If the deconversion includes archived or purged data, this information will be included in our files to the new provider. If a deconversion occurs, several options exist that enable the client to access archived/historical data. Some of these options include deconversion of AWD records into another format, or an arrangement whereby we continue to perform lookups of AWD images.



As Contract expiration and/or termination are events in the future, it is difficult to know at this time what specific technology and file formats would be available and/or preferable to the State in the future. Since TFI and AGID will use subcontractors that provide services to many 529 plans, including advisor-sold plans, TFI anticipates that these subcontractors would provide information in file formats that would be acceptable to the State.

TFI and AGID will use subcontractors experienced with converting information on 529-plans, so TFI anticipates that information will be provided in a commercially reasonable amount of time and TFI will work with the State to ensure compliance with applicable statutory requirements.

In the event of contract expiration or termination, all system data, accounts and assets related to this contract will be provided to the Contract Compliance Inspector or designee within five business days of request in a commercially useable format as long as the State provides reasonable advanced notice for the request. It is generally expected that upon contract expiration or termination, notice would be provided as early as 6 months prior.

6.0 Service Levels

- 6.1 The Contractor must provide a full service level agreement for performance standards of all services within this contract.

Service Level Standards

The service level standards reflected in this Schedule represent the levels and standards which Contactor has been generally achieving its day-to-day operations and which the State may reasonably expect to generally achieve in performing the Services set forth in the contract. Notwithstanding anything in the contract or any other supplement to the contrary, this does not mean, and, neither represents, warrants or covenants that, nor does the Fund expect, that shall always meet, fulfill or comply with the foregoing standards at all times. In the event of a failure to meet, fulfill or comply with the foregoing standards the two Parties shall coordinate and cooperate to correct the inadequacies. In such event, the Contractor shall provide the resources reasonably necessary to restore its compliance with the foregoing standards as quickly as reasonably practical under the circumstances.

Performance Target	Measurement
<p>Transaction Processing Accuracy</p> <p><i>Overall Contractor corporate-wide accuracy results will meet or exceed NQR average overall benchmark for financial and non-financial transactions.</i></p> <p>Note: NQR reports its measurement of performance for manual processing as a percentage and also reports a "precision variable" for the percentage measurement. For purposes of this Schedule, Boston Financial shall also be deemed to have met a Service Level if the measurement that NQR reports for Boston Financial for that Service Level varies from the NQR average by no more than the NQR reported precision variable for that quarter. The service level will be considered unmet if Boston Financial falls below the NQR average for more than four consecutive quarters.</p>	<p>Results will be measured using industry benchmark reported by National Quality Review, (NQR) quarterly and will be adjusted to exclude mutually reclassified items and items mutually identified to have no external impact. Results will be reported on a quarterly basis.</p>



Performance Target	Measurement		
Transaction Processing Timeliness <i>Overall Contractor corporate-wide turnaround results will meet or exceed standard corporate turnaround schedules and regulatory requirements for financial and non-financial transactions</i> The transaction turnaround targets apply only to requests received in good order by Contractor before 4PM EST.	TRANSACTION	CATEGORY	TARGET TURNAROUND
	Purchases	Financial	Day of Receipt
	New Accounts with Funding ¹	Financial	Day of Receipt
	Redemptions ²	Financial	Day of Receipt
	Exchanges	Financial	Day of Receipt
	New Accounts without Funding ¹	Non-Financial	Day after Receipt
	Transfers	Non-Financial	3 Days after Receipt
	Account Maintenance ³	Non-Financial	5 Days after Receipt
	Return Mail	Non-Financial	Quarterly Cycle
	Not in Good Order Requests ⁴	Financial	5 Days after Receipt
		Non-Financial	10 Days after Receipt
	1. New Account Requests. Requests that do not include funding with the new account application will be considered non-financial transactions. 2. Redemption Requests. Excludes redemptions through a conduit account, including those requiring a change in account registration including transfer on death, estate redemptions. Such requests will be considered transfers and measured against a standard of 3 days. 3. Account Maintenance Requests. Target turnaround excludes Return Mail Items. 4. Transactions Not in Good Order. Call out attempts <i>may</i> be initiated as appropriate and only if the necessary contact information is available. For items not resolved via telephone, written communication will be initiated and the number of days after receipt will begin to be tracked using the date of the last call out.		



Performance Target	Measurement
Quarterly Call Answer Rate <i>Each quarter, no less than 98% of calls will be answered by a Contractor service representative during the applicable hours.</i>	Contractor will provide the Fund with a quarterly report detailing the number of Calls received and the Call Answer Rate achieved. Calls will be charted through Contractor's call tracking system.
Quarterly Call Answer Speed <i>Each quarter, no less than 80% of the calls will be answered within an average of 20 seconds during the applicable hours.</i>	Contractor will provide the Fund with a quarterly report detailing the number of Calls received and the Call Answer Speed achieved. Calls will be charted through Contractor's call tracking system.

1.030 Roles and Responsibilities

1.031 Contractor Staff, Roles, and Responsibilities

1. Pamela McNulty will be the project manager and central point of contact for all contractual activities.
2. The Contractor staff includes Doug Chittenden, Pamela McNulty, , and Marc Speiser.

Doug Chittenden's chief roles within TFI are strategic management and product development. He has overall responsibility for managing TFI, which provides program management services for eight Section 529 programs (including the Independent 529 prepaid tuition plan). Doug is in charge of TFI's relations with TIAA-CREF business units as well as outside fund managers. Recently Doug led negotiations with Allianz Global Investors Distributors, LLC which led to the partnership that will create an advisor-sold channel within the Oklahoma College Savings Plan. He represents TFI during his frequent visits with State 529 managers. His background demonstrates strengths in managing mutual fund products, working with state government, and running effective client service operations (including five years of institutional client service management in Michigan), all of which apply to the services envisioned in this Contract. Doug is a Registered Principal, with FINRA Series 6, 7, 24, 26, and 51 licenses, and a 17-year employee of TIAA-CREF.

Pam McNulty is TFI's chief relationship executive, and she works directly with State 529 programs in Michigan, Connecticut, and Vermont, to ensure strong, collaborative partnerships. As Michigan's relationship manager, she is the point person for managing the current MESP-Direct plan, and is named as TFI's project manager for the MESP-Advisor Plan. She has extensive management experience in client services, and state and institutional relations. Her focus on service and accountability will be invaluable when launching the MESP-Advisor Plan. Pam also manages TFI's Relationship Management Unit, which is responsible for all 529 plans managed by TFI. She has FINRA Series 6, 26, 51, and 63 licenses, and 21 years' experience with TIAA-CREF.

Marc Speiser supports contract administration, market research, and state government-related operations of TFI's 529 programs as a member of the Relationship Management Unit. Based in East Lansing, he worked as a tuition field consultant for MESP, with experience in sales, marketing, and policy development with Treasury personnel. He has his Series 6 and 63 licenses and has worked for TFI (frequently alongside MET) for the past 7 years.

AGID

Mark Thomas, CIMA

Mark Thomas is Executive Vice President and Director of Managed Accounts for Allianz Global Investors Managed Accounts. He is responsible for the managed account and college savings business at Allianz Global Investors in addition to working with research, sales and marketing at the home office level. Mr. Thomas joined



the firm in 2002, having previously worked at Nicholas-Applegate Capital Management as an Investment Officer. He has over 11 years of financial industry experience and earned an MBA from San Diego State University, a BS from the University of New Mexico and holds the Certified Investment Management Analyst (CIMA) designation.

John Stergiou

John Stergiou is a Vice President for Allianz Global Investors. He is currently responsible for sales within the 529 and Managed Accounts divisions. Mr. Stergiou joined the firm in 2000 as an Internal Wholesaler for the Mutual Fund Division prior to moving to the Managed Accounts Group as a Divisional Supervisor/Investment Specialist. In 2006 he changed roles to managing the Internal Sales Force of over 40 wholesalers. He previously was employed by PaineWebber for two years working on a brokerage team. Mr. Stergiou is currently a candidate for the Certified Investment Management Analyst (CIMA) designation. He has over 9 years of investment experience with Series 6, 7, 26, 51, 63 and 65 licenses, and received a BS in Finance and Communications from Boston College.

Paul Pietranico, CFA

2008 Portfolio manager focused on manager selection (for multi-manager strategies) and portfolio construction since June 23, 2008. He joined Allianz Global Investors of America L.P. in June 2005 as director of the investment manager due diligence, risk analysis and performance reporting teams. Prior to that, he worked at the Center for Investment Research at Charles Schwab & Co. where he was a director of quantitative mutual fund research and portfolio construction. He worked on the quantitative research and modeling work for Schwab's proprietary predictive rating system for open-ended mutual funds. He also spent a significant number of years working on research projects relating to Schwab's investment advice offering including investment advice software tools for retirement planning, portfolio simulation, risk analysis, asset allocation and portfolio construction. He started his career at Schwab as a mutual fund due diligence analyst. Mr. Pietranico holds a BS in physics, an MA in philosophy of science and an MS in Engineering Economic Systems & Operations Research, each from Stanford University.

Stephen Sexauer

Stephen Sexauer 2008 Chief Investment Officer of AGI Solutions since June 23, 2008. From April 2007-June 2008, Mr. Sexauer was a Managing Director of Allianz Global Investors of America LLC and from May 2003-April 2004, he was a Managing Director and Portfolio Manager of Nicholas-Applegate Capital Management, LLC. Prior to that, he was a Portfolio Manager at Morgan Stanley Investment Management from July 1989-March 2002. Mr. Sexauer worked at Salomon Brothers in Fixed Income sales from April 1988-June 1989 and in Technology Systems from November 1986-April 1988. Mr. Sexauer worked in Economic Consulting at Merrill Lynch Economics from June 1982-April 1985 and at Wharton Econometrics from June 1982-April 1985. Mr. Sexauer holds an MBA from the University of Chicago and a BS from the University of Illinois.



3. The subcontractors under this Contract follow:

Description of work	Subcontractor, address, contact person
Product design and development, investment of assets, recordkeeping, marketing, promotion, distribution, customer service, certain administrative services, calculation of daily unit value, custody	Allianz Global Investors Distributors LLC 1345 Avenue of the Americas New York, NY John Stergiou

AGID will subcontract certain services for which it is responsible to the following entities:

Recordkeeping	Boston Financial Data Services 30 Dan Road Canton, MA John Stergiou
Calculation of unit value and certain administrative services	State Street Bank and Trust Company 801 Pennsylvania Avenue Kansas City, MO John Stergiou
Custody	State Street Bank and Trust Company 801 Pennsylvania Avenue Kansas City, MO John Stergiou

Add to chart under AGID Subcontractors

<u>Investment services</u>	Allianz Global Investors Solutions,
	<u>An affiliate of AGID</u>
	<u>1345 Avenue of the Americas</u>
	<u>New York, New York</u>
	<u>Stephen Sexauer</u>

Change John Stergiou as main contact under Recordkeeping to Joe Quirk

1.040 Project Plan

1.041 Project Plan Management

1. The Contractor will carry out this project under the direction and control of the Contract Compliance Inspector.
2. Although there will be continuous liaison with the Contractor team, the Contract Compliance Inspector will meet monthly at minimum, or as requested by the Contract Compliance Inspector, with the Contractor's



project manager for the purpose of reviewing progress and providing necessary guidance to the Contractor in solving problems which arise.

3. The Contractor will meet with the Contract Compliance Inspector and/or other State staff quarterly to review program and investment performance.
4. The Contractor will submit brief written monthly summaries of progress which outline the work accomplished during the reporting period; work to be accomplished during the subsequent reporting period; problems, real or anticipated, which should be brought to the attention of the Contract Compliance Inspector; and notification of any significant deviation from previously agreed-upon work plans.
5. Deleted/Not Applicable



6. Within five (5) working days of the award of the Contract, the Contractor will submit to the Contract Compliance Inspector for final approval a work plan. This final implementation plan must be in agreement with the project plan as proposed by the Contractor and accepted by the State for Contract, and must include the following:
 - a. The Contractor's project organizational structure.
 - b. The Contractor's staffing table with names and title of personnel assigned to the project. This must be in agreement with staffing of accepted proposal. Necessary substitutions due to change of employment status and other unforeseen circumstances may only be made with prior approval of the State.
 - c. The project breakdown showing sub-projects, activities and tasks, and resources required and allocated to each.

1.042 Reports

1. Develop a method for reporting requirements of PA 161 and IRC Sec. 529 to include:
 - a. Quarterly and annual statements to account owners (see forms in Exhibit 10): *Quarterly account statements* will be sent to all account owners within seven business days after the quarter end. *Fourth quarter account statements* will follow the same guidelines as the quarterly statements, but will include activity for the entire year and serve as the "annual statement" for the account owner. *Quarterly and annual statements* will include: contributions, earnings and value calculation totals; prior and current year contribution totals; and transaction activity details for the period as described.
 - b. 1099-Q information to the Internal Revenue Service and account owners: Form 1099-Qs will be generated in accordance with the Proposed Regulations under Section 529 and IRS guidelines, and MCL 390.1481.
2. Quarterly reports to the State Treasurer and the MET Board on the investment performance. The report should include but not be limited to:
 - a. Number of account owners, designated beneficiaries and distributees of accounts
 - b. The total amount contributed to all accounts during the year
 - c. All distributions from all accounts and whether or not each distribution was a qualified withdrawal
 - d. Account management fee adjustment
 - e. Presentation of performance results calculated according to criteria set by Association for Investment Management and Research "AIMR" with comparison to appropriate benchmarks, and rankings by rating agencies (such as MorningStar or Value Line)
 - f. Any other information that the State Treasurer and MET Board may require.

The Contractor will provide the information requested above in the format of a quarterly report as either a stand-alone report with regard to the MESP-Advisor Plan or in a consolidated form along with MESP-Direct information. The Contractor will provide benchmark comparisons and peer rankings where appropriate and other data as requested by the CCI for MESP-Advisor Plans.

3. Deleted/Not Applicable
4. The Contractor will be required to provide audited financial statements on an annual basis in accordance with the requirements of the Michigan Department of Auditor General for inclusion in the State of Michigan Comprehensive Annual Financial Report (SOMCAFR).
5. Reports as required by the Contract Compliance Inspector as agreed or approved by the Contract Compliance Inspector.
- 6.



6. Monthly call center reports to include the number of calls, the average length of time customers are on hold, number of complaints, timely resolution, and number of dropped calls.
7. Quarterly reports for number of brokers and distribution channels through which the advisor-sold MESP is offered.

1.050 Acceptance

1.051 Criteria

The following criteria will be used by the State to determine Acceptance of the Services and/or Deliverables provided under this SOW.

1. Performance and Reliability Evaluation (PARE)

The Performance and Reliability Evaluation will consist of three phases as follows:

a. PHASE 1 – Specifications Compliance Review

The first phase shall be comprised of a compliance review of the specifications for the system listed in the Contract. This review will ensure all items are in compliance with the required specifications for the Contract. In the event Treasury determines that any component or feature of the system does not comply with the mandatory specifications of the Contract, State reserves the right to cancel the Contract.

b. PHASE 2 – Acceptance Test

The Contract Compliance Inspector will evaluate the system's performance based on the data integrity, querying capability and reports produced. The Contract Compliance Inspector will determine that the system is fully operational when all of the requirements listed in the Contract are met. It will be the Contract Compliance Inspector's responsibility to determine that the system is fully operational.

c. PHASE 3 – Post Implementation

The performance period for Phase 3 is a period of 45 consecutive calendar days.

During the performance period for Phase 3 there shall be no more than three interruptions. During the performance period for Phase 3 there shall be no individual interruption that lasts longer than four (4) hours.

An interruption is defined as failure in the Contractor-supplied system or application, which results in work stoppage.

Work stoppages resulting from network downtime, Treasury-supplied equipment failure or Treasury-supplied software malfunctions shall not be included in the performance period.

1.052 Final Acceptance

Final Acceptance will be completed forty-five (45) days after Phase 3 of the PARE in section 1.501. During Final Acceptance, there shall be no more than three (3) interruptions. During Final Acceptance there shall be no individual interruption that lasts longer than four (4) hours (see 1.051.1.c for definition of interruption). Upon completion of Final Acceptance, the Contract Compliance Inspector will provide written acceptance of the system.

1.060 Proposal Pricing

1.061 Proposal Pricing

For authorized Services and Price List, see Attachment A.



Contractor's out-of-pocket expenses are not separately reimbursable by the State unless, on a case-by-case basis for unusual expenses, the State has agreed in advance and in writing to reimburse Contractor for the expense at the State's current travel reimbursement rates. See www.michigan.gov/dmb for current rates.

1.062 Price Term

This Contract will be a firm, fixed price Contract. Prices quoted are firm for the entire length of the Contract.

1.063 Tax Excluded from Price

(a) Sales Tax: For purchases made directly by the State, the State is exempt from State and Local Sales Tax. Prices must not include the taxes. Exemption Certificates for State Sales Tax will be furnished upon request.

(b) Federal Excise Tax: The State may be exempt from Federal Excise Tax, or the taxes may be reimbursable, if articles purchased under any resulting Contract are used for the State's exclusive use. Certificates showing exclusive use for the purposes of substantiating a tax-free, or tax-reimbursable sale will be sent upon request. If a sale is tax exempt or tax reimbursable under the Internal Revenue Code, prices must not include the Federal Excise Tax.

1.064 Holdback

Deleted – Not Applicable

1.070 Additional Requirements

Deleted – Not Applicable



Article 2, Terms and Conditions

2.000 Contract Structure and Term

2.001 Contract Term

This Contract is for a period of five (5) years beginning March 9, 2009 through March 8, 2014. All outstanding Purchase Orders must also expire upon the termination (cancellation for any of the reasons listed in **Section 2.130**) of the Contract, unless otherwise extended under the Contract. Absent an early termination for any reason, Purchase Orders issued but not expired, by the end of the Contract's stated term, will remain in effect for the balance of the fiscal year for which they were issued.

2.002 Renewal(s)

This Contract may be renewed in writing by mutual agreement of the parties not less than 30 days before its expiration. The Contract may be renewed for up to two (2) additional one (1) year periods.

2.003 Legal Effect

Contractor shall show acceptance of this Contract by signing two copies of the Contract and returning them to the Contract Administrator. The Contractor shall not proceed with the performance of the work to be done under the Contract, including the purchase of necessary materials, until both parties have signed the Contract to show acceptance of its terms, and the Contractor receives a contract release/purchase order that authorizes and defines specific performance requirements.

Except as otherwise agreed in writing by the parties, the State assumes no liability for costs incurred by Contractor or payment under this Contract, until Contractor is notified in writing that this Contract (or Change Order) has been approved by the State Administrative Board (if required), approved and signed by all the parties, and a Purchase Order against the Contract has been issued.

2.004 Attachments & Exhibits

All Attachments and Exhibits affixed to any and all Statement(s) of Work, or appended to or referencing this Contract, are incorporated in their entirety and form part of this Contract.

2.005 Ordering

The State will issue a written Purchase Order, Blanket Purchase Order, Direct Voucher or Procurement Card Order, which must be approved by the Contract Administrator or the Contract Administrator's designee, to order any Services/Deliverables under this Contract. All orders are subject to the terms and conditions of this Contract. No additional terms and conditions contained on either a Purchase Order or Blanket Purchase Order apply unless they are also specifically contained in that Purchase Order's or Blanket Purchase Order's accompanying Statement of Work.

2.006 Order of Precedence

(a) The Contract, including any Statements of Work and Exhibits, to the extent not contrary to the Contract, each of which is incorporated for all purposes, constitutes the entire agreement between the parties with respect to the subject matter and supersedes all prior agreements, whether written or oral, with respect to the subject matter and as additional terms and conditions on the purchase order must apply as limited by **Section 2.005**.

(b) In the event of any inconsistency between the terms of the Contract and a Statement of Work, the terms of the Statement of Work will take precedence (as to that Statement of Work only); provided, however, that a Statement of Work may not modify or amend the terms of the Contract, which may be modified or amended only by a formal Contract amendment.

2.007 Headings

Captions and headings used in the Contract are for information and organization purposes. Captions and headings, including inaccurate references, do not, in any way, define or limit the requirements or terms and conditions of the Contract.

2.008 Form, Function & Utility

If the Contract is for use of more than one State agency and if the Deliverable/Service does not meet the form, function, and utility required by that State agency, that agency may, subject to State purchasing policies, procure the Deliverable/Service from another source.

**2.009 Reformation and Severability**

Each provision of the Contract is severable from all other provisions of the Contract and, if one or more of the provisions of the Contract is declared invalid, the remaining provisions of the Contract remain in full force and effect.

2.010 Consents and Approvals

Except as expressly provided otherwise in the Contract, if either party requires the consent or approval of the other party for the taking of any action under the Contract, the consent or approval must be in writing and must not be unreasonably withheld or delayed.

2.011 No Waiver of Default

If a party fails to insist upon strict adherence to any term of the Contract then the party has not waived the right to later insist upon strict adherence to that term, or any other term, of the Contract.

2.012 Survival

Any provisions of the Contract that impose continuing obligations on the parties, including without limitation the parties' respective warranty, indemnity and confidentiality obligations, survive the expiration or termination of the Contract for any reason. Specific references to survival in the Contract are solely for identification purposes and not meant to limit or prevent the survival of any other section.

2.020 Contract Administration**2.021 Issuing Office**

This Contract is issued by the Department of Management and Budget, Purchasing Operations and Department of Treasury (collectively, including all other relevant State of Michigan departments and agencies, the "State"). Purchasing Operations is the sole point of contact in the State with regard to all procurement and contractual matters relating to the Contract. Purchasing Operations **is the only State office authorized to change, modify, amend, alter or clarify the prices, specifications, terms and conditions of this Contract.** The Contractor Administrator within Purchasing Operations for this Contract is:

Jim Wilson
Purchasing Operations
Department of Management and Budget
Mason Bldg, 2nd Floor
PO Box 30026
Lansing, MI 48909
Wilsonj4@michigan.gov
517-241-1916

2.022 Contract Compliance Inspector (CCI)

After DMB-Purchasing Operations receives the properly executed Contract, it is anticipated that the Director of Purchasing Operations, in consultation with Department of Treasury, will direct the person named below, or any other person so designated, to monitor and coordinate the activities for the Contract on a day-to-day basis during its term. However, monitoring of this Contract implies **no authority to change, modify, clarify, amend, or otherwise alter the prices, terms, conditions and specifications of the Contract as that authority is retained by DMB Purchasing Operations.** The Contract Compliance Inspector for this Contract is:

Robin Lott, Executive Director
Department of Treasury
Michigan Education Trust
430 West Allegan
Lansing, MI 48922
LottR@michigan.gov
517-241-4884.

2.023 Project Manager

Deleted – Not Applicable

**2.024 Change Requests**

The State reserves the right to request from time to time any changes to the requirements and specifications of the Contract and the work to be performed by the Contractor under the Contract. During the course of ordinary business, it may become necessary for the State to discontinue certain business practices or create Additional Services/Deliverables. At a minimum, to the extent applicable, the State would like the Contractor to provide a detailed outline of all work to be done, including tasks necessary to accomplish the services/deliverables, timeframes, listing of key personnel assigned, estimated hours for each individual per task, and a complete and detailed cost justification.

If the Contractor does not so notify the State, the Contractor has no right to claim thereafter that it is entitled to additional compensation for performing that service or providing that deliverable.

Change Requests:

- (a) By giving Contractor written notice within a reasonable time, the State must be entitled to accept a Contractor proposal for Change, to reject it, or to reach another agreement with Contractor. Should the parties agree on carrying out a Change, a written Contract Change Notice must be prepared and issued under this Contract, describing the Change and its effects on the Services and any affected components of this Contract (a "Contract Change Notice").
- (b) No proposed Change must be performed until the proposed Change has been specified in a duly executed Contract Change Notice issued by the Department of Management and Budget, Purchasing Operations.
- (c) If the State requests or directs the Contractor to perform any activities that Contractor believes constitute a Change, the Contractor must notify the State that it believes the requested activities are a Change before beginning to work on the requested activities. If the Contractor fails to notify the State before beginning to work on the requested activities, then the Contractor waives any right to assert any claim for additional compensation or time for performing the requested activities. If the Contractor commences performing work outside the scope of this Contract and then ceases performing that work, the Contractor must, at the request of the State, retract any out-of-scope work that would adversely affect the Contract.

2.025 Notices

Any notice given to a party under the Contract must be deemed effective, if addressed to the party as addressed below, upon: (i) delivery, if hand delivered; (ii) receipt of a confirmed transmission by facsimile if a copy of the notice is sent by another means specified in this Section; (iii) the third Business Day after being sent by U.S. mail, postage pre-paid, return receipt requested; or (iv) the next Business Day after being sent by a nationally recognized overnight express courier with a reliable tracking system.

State:

State of Michigan
Purchasing Operations
Attention: Jim Wilson
PO Box 30026
530 West Allegan
Lansing, Michigan 48909

Contractor:

Pamela L. McNulty
TIAA-CREF Tuition Financing, Inc.
One Hamden Center
2319 Whitney Avenue
Suite 6A
Hamden, CT 06518.

Either party may change its address where notices are to be sent by giving notice according to this Section.

2.026 Binding Commitments

Representatives of Contractor must have the authority to make binding commitments on Contractor's behalf within the bounds set forth in this Contract. Contractor may change the representatives from time to time upon written notice.

**2.027 Relationship of the Parties**

The relationship between the State and Contractor is that of client and independent contractor. No agent, employee, or servant of Contractor or any of its Subcontractors must be or must be deemed to be an employee, agent or servant of the State for any reason. Contractor will be solely and entirely responsible for its acts and the acts of its agents, employees, servants and Subcontractors during the performance of the Contract.

2.028 Covenant of Good Faith

Each party must act reasonably and in good faith. Unless stated otherwise in the Contract, the parties will not unreasonably delay, condition or withhold the giving of any consent, decision or approval that is either requested or reasonably required of them in order for the other party to perform its responsibilities under the Contract.

2.029 Assignments

(a) Neither party may assign the Contract, or assign or delegate any of its duties or obligations under the Contract, to any other party (whether by operation of law or otherwise), without the prior written consent of the other party; provided, however, that the State may assign the Contract to any other State agency, department, division or department without the prior consent of Contractor and Contractor may assign the Contract to an affiliate so long as the affiliate is adequately capitalized and can provide adequate assurances that the affiliate can perform the Contract. The State may withhold consent from proposed assignments, subcontracts, or novations when the transfer of responsibility would operate to decrease the State's likelihood of receiving performance on the Contract or the State's ability to recover damages.

(b) Contractor may not, without the prior written approval of the State, assign its right to receive payments due under the Contract. If the State permits an assignment, the Contractor is not relieved of its responsibility to perform any of its contractual duties, and the requirement under the Contract that all payments must be made to one entity continues.

(c) If the Contractor intends to assign the contract or any of the Contractor's rights or duties under the Contract, the Contractor must notify the State in writing at least 90 days before the assignment. The Contractor also must provide the State with adequate information about the assignee within a reasonable amount of time before the assignment for the State to determine whether to approve the assignment.

2.030 General Provisions**2.031 Media Releases**

News releases (including promotional literature and commercial advertisements) pertaining to the RFP and Contract or project to which it relates shall not be made without prior written State approval, and then only in accordance with the explicit written instructions from the State. No results of the activities associated with the RFP and Contract are to be released without prior written approval of the State and then only to persons designated.

2.032 Contract Distribution

Purchasing Operations retains the sole right of Contract distribution to all State agencies and local units of government unless other arrangements are authorized by Purchasing Operations..

2.033 Permits

Contractor must obtain and pay any associated costs for all required governmental permits, licenses and approvals for the delivery, installation and performance of the Services. The State must pay for all costs and expenses incurred in obtaining and maintaining any necessary easements or right of way.

2.034 Website Incorporation

The State is not bound by any content on the Contractor's website, even if the Contractor's documentation specifically referenced that content and attempts to incorporate it into any other communication, unless the State has actual knowledge of the content and has expressly agreed to be bound by it in a writing that has been manually signed by an authorized representative of the State.

2.035 Future Bidding Preclusion

Contractor acknowledges that, to the extent this Contract involves the creation, research, investigation or generation of a future RFP, it may be precluded from bidding on the subsequent RFP. The State reserves the right to disqualify any bidder if the State determines that the bidder has used its position (whether as an incumbent Contractor, or as a Contractor hired to assist with the RFP development, or as a Vendor offering free assistance) to gain a competitive advantage on the RFP.

**2.036 Freedom of Information**

All information in any proposal submitted to the State by Contractor and this Contract is subject to the provisions of the Michigan Freedom of Information Act, 1976 Public Act No. 442, as amended, MCL 15.231, et seq (the "FOIA").

2.037 Disaster Recovery

Contractor and the State recognize that the State provides essential services in times of natural or man-made disasters. Therefore, except as so mandated by Federal disaster response requirements, Contractor personnel dedicated to providing Services/Deliverables under this Contract will provide the State with priority service for repair and work around in the event of a natural or man-made disaster.

2.040 Financial Provisions**2.041 Fixed Prices for Services/Deliverables**

Each Statement of Work or Purchase Order issued under this Contract shall specify (or indicate by reference to the appropriate Contract Exhibit) the firm, fixed prices for all Services/Deliverables, and the associated payment milestones and payment amounts. The State may make progress payments to the Contractor when requested as work progresses, but not more frequently than monthly, in amounts approved by the Contract Administrator, after negotiation. Contractor must show verification of measurable progress at the time of requesting progress payments.

2.042 Adjustments for Reductions in Scope of Services/Deliverables

If the scope of the Services/Deliverables under any Statement of Work issued under this Contract is subsequently reduced by the State, the parties shall negotiate an equitable reduction in Contractor's charges under such Statement of Work commensurate with the reduction in scope.

2.043 Services/Deliverables Covered

For all Services/Deliverables to be provided by Contractor (and its Subcontractors, if any) under this Contract, the State shall not be obligated to pay any amounts in addition to the charges specified in this Contract.

2.044 Invoicing and Payment – In General

(a) Each Statement of Work issued under this Contract shall list (or indicate by reference to the appropriate Contract Exhibit) the prices for all Services/Deliverables, equipment and commodities to be provided, and the associated payment milestones and payment amounts.

(b) Each Contractor invoice will show details as to charges by Service/Deliverable component and location at a level of detail reasonably necessary to satisfy the State's accounting and charge-back requirements. Invoices for Services performed on a time and materials basis will show, for each individual, the number of hours of Services performed during the billing period, the billable skill/labor category for such person and the applicable hourly billing rate. Prompt payment by the State is contingent on the Contractor's invoices showing the amount owed by the State minus any holdback amount to be retained by the State in accordance with **Section 1.064**.

(c) Correct invoices will be due and payable by the State, in accordance with the State's standard payment procedure as specified in 1984 Public Act No. 279, MCL 17.51 et seq., within 45 days after receipt, provided the State determines that the invoice was properly rendered.

(d) All invoices should reflect actual work done. Pricing will be based on basis points of the total assets. Payment for this contract will occur monthly based on the advisor-sold MESP average daily net assets. Specific details of invoices and payments will be agreed upon between the Contract Compliance Inspector and the Contractor after the proposed Contract Agreement has been signed and accepted by both the Contractor and the Director of Purchasing Operations, Department of Management & Budget. This activity will occur only upon the specific written direction from Purchasing Operations.

2.045 Pro-ration

To the extent there are any Services that are to be paid for on a monthly basis, the cost of such Services shall be pro-rated for any partial month.

2.046 Antitrust Assignment

The Contractor assigns to the State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Contractor, toward fulfillment of this Contract.

**2.047 Final Payment**

The making of final payment by the State to Contractor does not constitute a waiver by either party of any rights or other claims as to the other party's continuing obligations under the Contract, nor will it constitute a waiver of any claims by one party against the other arising from unsettled claims or failure by a party to comply with this Contract, including claims for Services and Deliverables not reasonably known until after acceptance to be defective or substandard. Contractor's acceptance of final payment by the State under this Contract shall constitute a waiver of all claims by Contractor against the State for payment under this Contract, other than those claims previously filed in writing on a timely basis and still unsettled.

2.048 Electronic Payment Requirement

Electronic transfer of funds is required for payments on State Contracts. Contractors are required to register with the State electronically at <http://www.cpexpress.state.mi.us>. As stated in Public Act 431 of 1984, all contracts that the State enters into for the purchase of goods and services shall provide that payment will be made by electronic fund transfer (EFT).

2.050 Taxes**2.051 Employment Taxes**

Contractors are expected to collect and pay all applicable federal, state, and local employment taxes including the taxes.

2.052 Sales and Use Taxes

Contractors are required to be registered and to remit sales and use taxes on taxable sales of tangible personal property or services delivered into the State. Contractors that lack sufficient presence in Michigan to be required to register and pay tax must do so as a volunteer. This requirement extends to: (1) all members of any controlled group as defined in § 1563(a) of the Internal Revenue Code and applicable regulations of which the company is a member, and (2) all organizations under common control as defined in § 414(c) of the Internal Revenue Code and applicable regulations of which the company is a member that make sales at retail for delivery into the State are registered with the State for the collection and remittance of sales and use taxes. In applying treasury regulations defining "two or more trades or businesses under common control" the term "organization" means sole proprietorship, a partnership (as defined in § 701(a)(2) of the Internal Revenue Code), a trust, an estate, a corporation, or a limited liability company.

2.060 Contract Management**2.061 Contractor Personnel Qualifications**

All persons assigned by Contractor to the performance of Services under this Contract must be employees of Contractor or its majority-owned (directly or indirectly, at any tier) subsidiaries (or a State-approved Subcontractor) and must be fully qualified to perform the work assigned to them. Contractor must include a similar provision in any subcontract entered into with a Subcontractor. For the purposes of this Contract, independent contractors engaged by Contractor solely in a staff augmentation role must be treated by the State as if they were employees of Contractor for this Contract only; however, the State understands that the relationship between Contractor and Subcontractor is an independent contractor relationship.

2.062 Contractor Key Personnel

(a) The Contractor must provide the Contract Compliance Inspector with the names of the Key Personnel.

(b) Key Personnel must be dedicated as defined in the Statement of Work to the Project for its duration in the applicable Statement of Work with respect to other individuals designated as Key Personnel for that Statement of Work.

(c) The State will have the right to recommend and approve in writing the initial assignment, as well as any proposed reassignment or replacement, of any Key Personnel. Before assigning an individual to any Key Personnel position, Contractor will notify the State of the proposed assignment, will introduce the individual to the appropriate State representatives, and will provide the State with a resume and any other information about the individual reasonably requested by the State. The State reserves the right to interview the individual before granting written approval. In the event the State finds a proposed individual unacceptable, the State will provide a written explanation including reasonable detail outlining the reasons for the rejection.



(d) Contractor must not remove any Key Personnel from their assigned roles or the Contract without the prior written consent of the State. The Contractor's removal of Key Personnel without the prior written consent of the State is an unauthorized removal ("Unauthorized Removal"). Unauthorized Removals does not include replacing Key Personnel for reasons beyond the reasonable control of Contractor, including illness, disability, leave of absence, personal emergency circumstances, resignation, or for cause termination of the Key Personnel's employment. Unauthorized Removals does not include replacing Key Personnel because of promotions or other job movements allowed by Contractor personnel policies or Collective Bargaining Agreement(s) as long as the State receives prior written notice before shadowing occurs and Contractor provides 30 days of shadowing unless parties agree to a different time period. The Contractor with the State must review any Key Personnel replacements, and appropriate transition planning will be established. Any Unauthorized Removal may be considered by the State to be a material breach of the Contract, in respect of which the State may elect to exercise its termination and cancellation rights.

(e) The Contractor must notify the Contract Compliance Inspector and the Contract Administrator at least 10 business days before redeploying non-Key Personnel, who are dedicated to primarily to the Project, to other projects. If the State does not object to the redeployment by its scheduled date, the Contractor may then redeploy the non-Key Personnel.

2.063 Re-assignment of Personnel at the State's Request

The State reserves the right to require the removal from the Project of Contractor personnel found, in the judgment of the State, to be unacceptable. The State's request must be written with reasonable detail outlining the reasons for the removal request. Additionally, the State's request must be based on legitimate, good-faith reasons. Replacement personnel for the removed person must be fully qualified for the position. If the State exercises this right, and the Contractor cannot immediately replace the removed personnel, the State agrees to an equitable adjustment in schedule or other terms that may be affected by the State's required removal. If any incident with removed personnel results in delay not reasonably anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Service will not be counted for a time as agreed to by the parties.

2.064 Contractor Personnel Location

All staff assigned by Contractor to work on the Contract will perform their duties either primarily at Contractor's offices and facilities or at State facilities. Without limiting the generality of the foregoing, Key Personnel will, at a minimum, spend at least the amount of time on-site at State facilities as indicated in the applicable Statement of Work. Subject to availability, selected Contractor personnel may be assigned office space to be shared with State personnel.

2.065 Contractor Identification

Contractor employees must be clearly identifiable while on State property by wearing a State-issued badge, as required. Contractor employees are required to clearly identify themselves and the company they work for whenever making contact with State personnel by telephone or other means.

2.066 Cooperation with Third Parties

Contractor agrees to cause its personnel and the personnel of any Subcontractors to cooperate with the State and its agents and other contractors including the State's Quality Assurance personnel. As reasonably requested by the State in writing, the Contractor will provide to the State's agents and other contractors reasonable access to Contractor's Project personnel, systems and facilities to the extent the access relates to activities specifically associated with this Contract and will not interfere or jeopardize the safety or operation of the systems or facilities. The State acknowledges that Contractor's time schedule for the Contract is very specific and agrees not to unnecessarily or unreasonably interfere with, delay or otherwise impeded Contractor's performance under this Contract with the requests for access.

2.067 Contractor Return of State Equipment/Resources

The Contractor must return to the State any State-furnished equipment, facilities and other resources when no longer required for the Contract in the same condition as when provided by the State, reasonable wear and tear excepted.

**2.068 Contract Management Responsibilities**

The Contractor will be required to assume responsibility for all contractual activities, whether or not that Contractor performs them. Further, the State will consider the Contractor to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the anticipated Contract. If any part of the work is to be subcontracted, the Contract must include a list of subcontractors, including firm name and address, contact person and a complete description of work to be subcontracted. The State reserves the right to approve subcontractors and to require the Contractor to replace subcontractors found to be unacceptable. The Contractor is totally responsible for adherence by the subcontractor to all provisions of the Contract. Any change in subcontractors must be approved by the State, in writing, prior to such change.

2.070 Subcontracting by Contractor**2.071 Contractor Full Responsibility**

Contractor shall have full responsibility for the successful performance and completion of all of the Services and Deliverables. The State will consider Contractor to be the sole point of contact with regard to all contractual matters under this Contract, including payment of any and all charges for Services and Deliverables.

2.072 State Consent to Delegation

Contractor shall not delegate any duties under this Contract to a Subcontractor unless the Department of Management and Budget, Purchasing Operations has given written consent to such delegation. The State shall have the right of prior written approval of all Subcontractors and to require Contractor to replace any Subcontractors found, in the reasonable judgment of the State, to be unacceptable. The State's request shall be written with reasonable detail outlining the reasons for the removal request. Additionally, the State's request shall be based on legitimate, good-faith reasons. Replacement Subcontractor(s) for the removed Subcontractor shall be fully qualified for the position. If the State exercises this right, and the Contractor cannot immediately replace the removed Subcontractor, the State will agree to an equitable adjustment in schedule or other terms that may be affected by the State's required removal. If any such incident with a removed Subcontractor results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLA for the affected Work will not be counted for a time agreed upon by the parties.

2.073 Subcontractor Bound to Contract

In any subcontracts entered into by Contractor for the performance of the Services, Contractor shall require the Subcontractor, to the extent of the Services to be performed by the Subcontractor, to be bound to Contractor by the terms of this Contract and to assume toward Contractor all of the obligations and responsibilities that Contractor, by this Contract, assumes toward the State. The State reserves the right to receive copies of and review all subcontracts, although Contractor may delete or mask any proprietary information, including pricing, contained in such contracts before providing them to the State. The management of any Subcontractor will be the responsibility of Contractor, and Contractor shall remain responsible for the performance of its Subcontractors to the same extent as if Contractor had not subcontracted such performance. Contractor shall make all payments to Subcontractors or suppliers of Contractor. Except as otherwise agreed in writing by the State and Contractor, the State will not be obligated to direct payments for the Services other than to Contractor. The State's written approval of any Subcontractor engaged by Contractor to perform any obligation under this Contract shall not relieve Contractor of any obligations or performance required under this Contract.

2.074 Flow Down

Except where specifically approved in writing by the State on a case-by-case basis, Contractor shall flow down the obligations in **Sections 2.031, 2.060, 2.100, 2.110, 2.120, 2.130, 2.200** in all of its agreements with any Subcontractors.

2.075 Competitive Selection

The Contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the Contract.

2.080 State Responsibilities**2.081 Equipment**

The State will provide only the equipment and resources identified in the Statements of Work and other Contract Exhibits.

**2.082 Facilities**

The State must designate space as long as it is available and as provided in the Statement of Work, to house the Contractor's personnel whom the parties agree will perform the Services/Deliverables at State facilities (collectively, the "State Facilities"). The Contractor must have reasonable access to, and unless agreed otherwise by the parties in writing must observe and comply with all rules and regulations relating to each of the State Facilities (including hours of operation) used by the Contractor in the course of providing the Services. Contractor agrees that it will not, without the prior written consent of the State, use any State Facilities or access any State information systems provided for the Contractor's use, or to which the Contractor otherwise gains access in the course of performing the Services, for any purpose other than providing the Services to the State.

2.090 Security**2.091 Background Checks**

On a case-by-case basis, the State may investigate the Contractor's personnel before they may have access to State facilities and systems. The scope of the background check is at the discretion of the State and the results will be used to determine Contractor personnel eligibility for working within State facilities and systems. The investigations will include Michigan State Police Background checks (ICHAT) and may include the National Crime Information Center (NCIC) Finger Prints. Proposed Contractor personnel may be required to complete and submit an RI-8 Fingerprint Card for the NCIC Finger Print Check. Any request for background checks will be initiated by the State and will be reasonably related to the type of work requested.

All Contractor personnel will also be expected to comply with the State's security and acceptable use policies for State IT equipment and resources. See <http://www.michigan.gov/dit>. Furthermore, Contractor personnel will be expected to agree to the State's security and acceptable use policies before the Contractor personnel will be accepted as a resource to perform work for the State. It is expected the Contractor will present these documents to the prospective employee before the Contractor presents the individual to the State as a proposed resource. Contractor staff will be expected to comply with all Physical Security procedures in place within the facilities where they are working.

2.092 Security Breach Notification

If the Contractor breaches this Section, the Contractor must (i) promptly cure any deficiencies and (ii) comply with any applicable federal and state laws and regulations pertaining to unauthorized disclosures. Contractor and the State will cooperate to mitigate, to the extent practicable, the effects of any breach, intrusion, or unauthorized use or disclosure. Contractor must report to the State in writing any use or disclosure of Confidential Information, whether suspected or actual, other than as provided for by the Contract within 10 days of becoming aware of the use or disclosure or the shorter time period as is reasonable under the circumstances.

2.093 PCI Data Security Requirements

Contractors with access to credit/debit card cardholder data must adhere to the Payment Card Industry (PCI) Data Security requirements. Contractor agrees that they are responsible for security of cardholder data in their possession. Contractor agrees that data can ONLY be used for assisting the State in completing a transaction, supporting a loyalty program, supporting the State, providing fraud control services, or for other uses specifically required by law. Contractor agrees to provide business continuity in the event of a major disruption, disaster or failure. The Contractor will contact the Department of Treasury immediately to advise them of any breaches in security where card data has been compromised. In the event of a security intrusion, the Contractor agrees the Payment Card Industry representative, or a Payment Card Industry approved third party, will be provided with full cooperation and access to conduct a thorough security review. The review will validate compliance with the Payment Card Industry Data Security Standard for protecting cardholder data.

Contractor agrees to properly dispose sensitive cardholder data when no longer needed. The Contractor will continue to treat cardholder data as confidential upon contract termination.

The Contractor will provide the Department of Treasury documentation showing PCI Data Security certification has been achieved. The Contractor will advise the Department of Treasury of all failures to comply with the PCI Data Security Requirements. Failures include, but are not limited to system scans and self-assessment questionnaires. The Contractor will provide a time line for corrective action.



2.100 Confidentiality

2.101 Confidentiality

Contractor and the State each acknowledge that the other possesses and will continue to possess confidential information that has been developed or received by it. As used in this Section, "Confidential Information" of Contractor must mean all non-public proprietary information of Contractor (other than Confidential Information of the State as defined below) which is marked confidential, restricted, proprietary or with a similar designation. "Confidential Information" of the State must mean any information which is retained in confidence by the State (or otherwise required to be held in confidence by the State under applicable federal, state and local laws and regulations) or which, in the case of tangible materials provided to Contractor by the State under its performance under this Contract, is marked as confidential, proprietary or with a similar designation by the State. "Confidential Information" excludes any information (including this Contract) that is publicly available under the Michigan FOIA.

2.102 Protection and Destruction of Confidential Information

The State and Contractor will each use at least the same degree of care to prevent disclosing to third parties the Confidential Information of the other as it employs to avoid unauthorized disclosure, publication or dissemination of its own confidential information of like character, but in no event less than reasonable care. Neither Contractor nor the State will (i) make any use of the Confidential Information of the other except as contemplated by this Contract, (ii) acquire any right in or assert any lien against the Confidential Information of the other, or (iii) if requested to do so, refuse for any reason to promptly return the other party's Confidential Information to the other party. Each party will limit disclosure of the other party's Confidential Information to employees and Subcontractors who must have access to fulfill the purposes of this Contract. Disclosure to, and use by, a Subcontractor is permissible where (A) use of a Subcontractor is authorized under this Contract, (B) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the Subcontractor's scope of responsibility, and (C) Contractor obligates the Subcontractor in a written Contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of Contractor and of any Subcontractor having access or continued access to the State's Confidential Information may be required to execute an acknowledgment that the employee has been advised of Contractor's and the Subcontractor's obligations under this Section and of the employee's obligation to Contractor or Subcontractor, as the case may be, to protect the Confidential Information from unauthorized use or disclosure.

Promptly upon termination or cancellation of the Contract for any reason, Contractor must certify to the State that Contractor has destroyed all State Confidential Information.

2.103 Exclusions

Notwithstanding the foregoing, the provisions of **Section 2.080** will not apply to any particular information which the State or Contractor can demonstrate (i) was, at the time of disclosure to it, in the public domain; (ii) after disclosure to it, is published or otherwise becomes part of the public domain through no fault of the receiving party; (iii) was in the possession of the receiving party at the time of disclosure to it without an obligation of confidentiality; (iv) was received after disclosure to it from a third party who had a lawful right to disclose the information to it without any obligation to restrict its further disclosure; or (v) was independently developed by the receiving party without reference to Confidential Information of the furnishing party. Further, the provisions of **Section 2.080** will not apply to any particular Confidential Information to the extent the receiving party is required by law to disclose the Confidential Information, provided that the receiving party (i) promptly provides the furnishing party with notice of the legal request, and (ii) assists the furnishing party in resisting or limiting the scope of the disclosure as reasonably requested by the furnishing party.

2.104 No Implied Rights

Nothing contained in this Section must be construed as obligating a party to disclose any particular Confidential Information to the other party, or as granting to or conferring on a party, expressly or impliedly, any right or license to the Confidential Information of the other party.

2.105 Respective Obligations

The parties' respective obligations under this Section must survive the termination or expiration of this Contract for any reason.

**2.110 Records and Inspections****2.111 Inspection of Work Performed**

The State's authorized representatives must at all reasonable times and with 10 days prior written request, have the right to enter Contractor's premises, or any other places, where the Services are being performed, and must have access, upon reasonable request, to interim drafts of Deliverables or work-in-progress. Upon 10 Days prior written notice and at all reasonable times, the State's representatives must be allowed to inspect, monitor, or otherwise evaluate the work being performed and to the extent that the access will not reasonably interfere or jeopardize the safety or operation of the systems or facilities. Contractor must provide all reasonable facilities and assistance for the State's representatives.

2.112 Examination of Records

For seven years after the Contractor provides any work under this Contract (the "Audit Period"), the State may examine and copy any of Contractor's books, records, documents and papers pertinent to establishing Contractor's compliance with the Contract and with applicable laws and rules. The State must notify the Contractor 20 days before examining the Contractor's books and records. The State does not have the right to review any information deemed confidential by the Contractor to the extent access would require the confidential information to become publicly available. This provision also applies to the books, records, accounts, documents and papers, in print or electronic form, of any parent, affiliated or subsidiary organization of Contractor, or any Subcontractor of Contractor performing services in connection with the Contract.

2.113 Retention of Records

Contractor must maintain at least until the end of the Audit Period all pertinent financial and accounting records (including time sheets and payroll records, and information pertaining to the Contract and to the Services, equipment, and commodities provided under the Contract) pertaining to the Contract according to generally accepted accounting principles and other procedures specified in this Section. Financial and accounting records must be made available, upon request, to the State at any time during the Audit Period. If an audit, litigation, or other action involving Contractor's records is initiated before the end of the Audit Period, the records must be retained until all issues arising out of the audit, litigation, or other action are resolved or until the end of the Audit Period, whichever is later.

2.114 Audit Resolution

If necessary, the Contractor and the State will meet to review each audit report promptly after issuance. The Contractor will respond to each audit report in writing within 30 days from receipt of the report, unless a shorter response time is specified in the report. The Contractor and the State must develop, agree upon and monitor an action plan to promptly address and resolve any deficiencies, concerns, and/or recommendations in the audit report.

2.115 Errors

(a) If the audit demonstrates any errors in the documents provided to the State, then the amount in error must be reflected as a credit or debit on the next invoice and in subsequent invoices until the amount is paid or refunded in full. However, a credit or debit may not be carried for more than four invoices. If a balance remains after four invoices, then the remaining amount will be due as a payment or refund within 45 days of the last quarterly invoice that the balance appeared on or termination of the contract, whichever is earlier.

(b) In addition to other available remedies, the difference between the payment received and the correct payment amount is greater than 10%, then the Contractor must pay all of the reasonable costs of the audit.

2.120 Warranties**2.121 Warranties and Representations**

The Contractor represents and warrants:

(a) It is capable in all respects of fulfilling and must fulfill all of its obligations under this Contract. The performance of all obligations under this Contract must be provided in a timely, professional, and workman-like manner and must meet the performance and operational standards required under this Contract.

(b) The Contract Appendices, Attachments and Exhibits identify the equipment and software and services necessary for the Deliverable(s) to perform and Services to operate in compliance with the Contract's requirements and other standards of performance.



(c) It is the lawful owner or licensee of any Deliverable licensed or sold to the State by Contractor or developed by Contractor under this Contract, and Contractor has all of the rights necessary to convey to the State the ownership rights or licensed use, as applicable, of any and all Deliverables. None of the Deliverables provided by Contractor to the State under this Contract, nor their use by the State, will infringe the patent, copyright, trade secret, or other proprietary rights of any third party.

(d) If, under this Contract, Contractor procures any equipment, software or other Deliverable for the State (including equipment, software and other Deliverables manufactured, re-marketed or otherwise sold by Contractor under Contractor's name), then in addition to Contractor's other responsibilities with respect to the items in this Contract, Contractor must assign or otherwise transfer to the State or its designees, or afford the State the benefits of, any manufacturer's warranty for the Deliverable.

(e) The contract signatory has the power and authority, including any necessary corporate authorizations, necessary to enter into this Contract, on behalf of Contractor.

(f) It is qualified and registered to transact business in all locations where required.

(g) Neither the Contractor nor any Affiliates, nor any employee of either, has, must have, or must acquire, any contractual, financial, business, or other interest, direct or indirect, that would conflict in any manner or degree with Contractor's performance of its duties and responsibilities to the State under this Contract or otherwise create an appearance of impropriety with respect to the award or performance of this Agreement. Contractor must notify the State about the nature of the conflict or appearance of impropriety within two days of learning about it.

(h) Neither Contractor nor any Affiliates, nor any employee of either has accepted or must accept anything of value based on an understanding that the actions of the Contractor or Affiliates or employee on behalf of the State would be influenced. Contractor must not attempt to influence any State employee by the direct or indirect offer of anything of value.

(i) Neither Contractor nor any Affiliates, nor any employee of either has paid or agreed to pay any person, other than bona fide employees and consultants working solely for Contractor or the Affiliate, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract.

(j) The prices proposed by Contractor were arrived at independently, without consultation, communication, or agreement with any other bidder for the purpose of restricting competition; the prices quoted were not knowingly disclosed by Contractor to any other bidder; and no attempt was made by Contractor to induce any other person to submit or not submit a proposal for the purpose of restricting competition.

(k) All financial statements, reports, and other information furnished by Contractor to the State as part of its response to the RFP or otherwise in connection with the award of this Contract fairly and accurately represent the business, properties, financial condition, and results of operations of Contractor as of the respective dates, or for the respective periods, covered by the financial statements, reports, other information. Since the respective dates or periods covered by the financial statements, reports, or other information, there have been no material adverse change in the business, properties, financial condition, or results of operations of Contractor.

(l) All written information furnished to the State by or for the Contractor in connection with this Contract, including its bid, is true, accurate, and complete, and contains no untrue statement of material fact or omits any material fact necessary to make the information not misleading.

(m) It is not in material default or breach of any other contract or agreement that it may have with the State or any of its departments, commissions, boards, or agencies. Contractor further represents and warrants that it has not been a party to any contract with the State or any of its departments that was terminated by the State or the department within the previous five years for the reason that Contractor failed to perform or otherwise breached an obligation of the contract.

(n) If any of the certifications, representations, or disclosures made in the Contractor's original bid response change after contract award, the Contractor is required to report those changes immediately to the Department of Management and Budget, Purchasing Operations.

**2.122 Warranty of Merchantability**

Goods provided by Contractor under this agreement shall be merchantable. All goods provided under this Contract shall be of good quality within the description given by the State, shall be fit for their ordinary purpose, shall be adequately contained and packaged within the description given by the State, shall conform to the agreed upon specifications, and shall conform to the affirmations of fact made by the Contractor or on the container or label.

2.123 Warranty of Fitness for a Particular Purpose

When the Contractor has reason to know or knows any particular purpose for which the goods are required, and the State is relying on the Contractor's skill or judgment to select or furnish suitable goods, there is a warranty that the goods are fit for such purpose.

2.124 Warranty of Title

Contractor shall, in providing goods to the State, convey good title in those goods, whose transfer is right and lawful. All goods provided by Contractor shall be delivered free from any security interest, lien, or encumbrance of which the State, at the time of contracting, has no knowledge. Goods provided by Contractor, under this Contract, shall be delivered free of any rightful claim of any third person by of infringement or the like.

2.125 Equipment Warranty

Deleted – Not Applicable

2.126 Equipment to be New

Deleted-Not Applicable

2.127 Prohibited Products

Deleted-Not Applicable

2.128 Consequences For Breach

In addition to any remedies available in law, if the Contractor breaches any of the warranties contained in this section, the breach may be considered as a default in the performance of a material obligation of this Contract.

2.130 Insurance**2.131 Liability Insurance**

The Contractor must provide proof of the minimum levels of insurance coverage as indicated below. The insurance must protect the State from claims which may arise out of or result from the Contractor's performance of services under the terms of this Contract, whether the services are performed by the Contractor, or by any subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable.

The Contractor waives all rights against the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents for recovery of damages to the extent these damages are covered by the insurance policies the Contractor is required to maintain under this Contract.

All insurance coverage's provided relative to this Contract/Purchase Order are PRIMARY and NON-CONTRIBUTING to any comparable liability insurance (including self-insurances) carried by the State.

The insurance must be written for not less than any minimum coverage specified in this Contract or required by law, whichever is greater.



The insurers selected by Contractor must have an A.M. Best rating of A- or better, or as otherwise approved in writing by the State, or if the ratings are no longer available, with a comparable rating from a recognized insurance rating agency. All policies of insurance required in this Contract must be issued by companies that have been approved to do business in the State.

See www.michigan.gov/dleg.

Where specific limits are shown, they are the minimum acceptable limits. If Contractor's policy contains higher limits, the State must be entitled to coverage to the extent of the higher limits.

The Contractor is required to pay for and provide the type and amount of insurance checked ☒ below:

- ☒ 1. Commercial General Liability with the following minimum coverage:
- \$2,000,000 General Aggregate Limit other than Products/Completed Operations
 - \$2,000,000 Products/Completed Operations Aggregate Limit
 - \$1,000,000 Personal & Advertising Injury Limit
 - \$1,000,000 Each Occurrence Limit

The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents as ADDITIONAL INSURED on the Commercial General Liability certificate. The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company.

- ☒ 2. If a motor vehicle is used to provide services or products under this Contract, the Contractor must have vehicle liability insurance on any auto including owned, hired and non-owned vehicles used in Contractor's business for bodily injury and property damage as required by law.

The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents as ADDITIONAL INSURED on the vehicle liability certificate. The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company.

- ☒ 3. Workers' compensation coverage must be provided according to applicable laws governing the employees and employers work activities in the state of the Contractor's domicile. If the applicable coverage is provided by a self-insurer, proof must be provided of approved self-insured authority by the jurisdiction of domicile. For employees working outside of the state of qualification, Contractor must provide appropriate certificates of insurance proving mandated coverage levels for the jurisdictions where the employees' activities occur.

Any certificates of insurance received must also provide a list of states where the coverage is applicable.

The Contractor also agrees to provide evidence that insurance policies/certificate contain a waiver of subrogation by the insurance company. This provision must not be applicable where prohibited or limited by the laws of the jurisdiction in which the work is to be performed.

- ☒ 4. Employers liability insurance with the following minimum limits:
- \$100,000 each accident
 - \$100,000 each employee by disease
 - \$500,000 aggregate disease

- ☒ 5. Employee Fidelity, including Computer Crimes, insurance providing coverage for direct loss arising out of or related to fraudulent or dishonest acts committed by the employees of Contractor or its Subcontractors, acting alone or in collusion with others, in a minimum amount of one million dollars (\$1,000,000.00).

- ☒ 6. Umbrella or Excess Liability Insurance in a minimum amount of ten million dollars (\$10,000,000.00), which must apply, at a minimum, to the insurance required in Subsection 1 (Commercial General Liability) above.

- ☒ 7. Professional Liability (Errors and Omissions) Insurance with the following minimum coverage: three million dollars (\$3,000,000.00) each occurrence and three million dollars (\$3,000,000.00) annual aggregate.



☐ 8. Fire and Personal Property Insurance covering against any loss or damage to the office space used by Contractor for any reason under this Contract, and the equipment, software and other contents of the office space, including without limitation, those contents used by Contractor to provide the Services to the State, up to its replacement value, where the office space and its contents are under the care, custody and control of Contractor. The policy must cover all risks of direct physical loss or damage, including without limitation, flood and earthquake coverage and coverage for computer hardware and software. The State must be endorsed on the policy as a loss payee as its interests appear.

2.132 Subcontractor Insurance Coverage

Except where the State has approved in writing a Contractor subcontract with other insurance provisions, Contractor must require all of its Subcontractors under this Contract to purchase and maintain the insurance coverage as described in this Section for the Contractor in connection with the performance of work by those Subcontractors. Alternatively, Contractor may include any Subcontractors under Contractor's insurance on the coverage required in this Section. Subcontractor(s) must fully comply with the insurance coverage required in this Section. Failure of Subcontractor(s) to comply with insurance requirements does not limit Contractor's liability or responsibility.

2.133 Certificates of Insurance and Other Requirements

Contractor must furnish to DMB-Purchasing Operations, certificate(s) of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required in this Section (the "Certificates"). The Certificate must be on the standard "accord" form or equivalent. **THE CONTRACT OR PURCHASE ORDER NO. MUST BE SHOWN ON THE CERTIFICATE OF INSURANCE TO ASSURE CORRECT FILING.** Issuing Insurer will endeavor to provide 30 days written notice of cancellations before the expiration date or material changes to the Certificate Holder, , except for 10 days for non-payment of premium, having been given to the Director of Purchasing Operations, Department of Management and Budget. The notice must include the Contract or Purchase Order number affected. Before the Contract is signed, and not less than 30 days before the insurance expiration date every year thereafter, the Contractor must provide evidence that the State and its agents, officers and employees are listed as additional insureds under each commercial general liability and commercial automobile liability policy. In the event the State approves the representation of the State by the insurer's attorney, the attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

The Contractor must maintain all required insurance coverage throughout the term of the Contract and any extensions. The minimum limits of coverage specified above are not intended, and must not be construed, to limit any liability or indemnity of Contractor under this Contract to any indemnified party or other persons. Contractor is responsible for all deductibles with regard to the insurance. If the Contractor fails to pay any premium for required insurance as specified in this Contract, or if any insurer cancels or significantly reduces any required insurance as specified in this Contract without the State's written consent, then the State may, after the State has given the Contractor at least 30 days written notice, pay the premium or procure similar insurance coverage from another company or companies. The State may deduct any part of the cost from any payment due the Contractor, or the Contractor must pay that cost upon demand by the State.

2.140 Indemnification

2.141 General Indemnification

To the extent permitted by law, the Contractor must indemnify, defend and hold harmless the State from liability, including all claims and losses, and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest and penalties), accruing or resulting to any person, firm or corporation that may be injured or damaged by the Contractor in the performance of this Contract and that are attributable to the negligence or tortious acts of the Contractor or any of its subcontractors, or by anyone else for whose acts any of them may be liable.

2.142 Code Indemnification

To the extent permitted by law, the Contractor shall indemnify, defend and hold harmless the State from any claim, loss, or expense arising from Contractor's breach of the No Surreptitious Code Warranty.

**2.143 Employee Indemnification**

In any claims against the State of Michigan, its departments, divisions, agencies, sections, commissions, officers, employees and agents, by any employee of the Contractor or any of its subcontractors, the indemnification obligation under the Contract must not be limited in any way by the amount or type of damages, compensation or benefits payable by or for the Contractor or any of its subcontractors under worker's disability compensation acts, disability benefit acts or other employee benefit acts. This indemnification clause is intended to be comprehensive. Any overlap in provisions, or the fact that greater specificity is provided as to some categories of risk, is not intended to limit the scope of indemnification under any other provisions.

2.144 Patent/Copyright Infringement Indemnification

To the extent permitted by law, the Contractor must indemnify, defend and hold harmless the State from and against all losses, liabilities, damages (including taxes), and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest and penalties) incurred in connection with any action or proceeding threatened or brought against the State to the extent that the action or proceeding is based on a claim that any piece of equipment, software, commodity or service supplied by the Contractor or its subcontractors, or the operation of the equipment, software, commodity or service, or the use or reproduction of any documentation provided with the equipment, software, commodity or service infringes any United States patent, copyright, trademark or trade secret of any person or entity, which is enforceable under the laws of the United States.

In addition, should the equipment, software, commodity, or service, or its operation, become or in the State's or Contractor's opinion be likely to become the subject of a claim of infringement, the Contractor must at the Contractor's sole expense (i) procure for the State the right to continue using the equipment, software, commodity or service or, if the option is not reasonably available to the Contractor, (ii) replace or modify to the State's satisfaction the same with equipment, software, commodity or service of equivalent function and performance so that it becomes non-infringing, or, if the option is not reasonably available to Contractor, (iii) accept its return by the State with appropriate credits to the State against the Contractor's charges and reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it.

Notwithstanding the foregoing, the Contractor has no obligation to indemnify or defend the State for, or to pay any costs, damages or attorneys' fees related to, any claim based upon (i) equipment developed based on written specifications of the State; (ii) use of the equipment in a configuration other than implemented or approved in writing by the Contractor, including, but not limited to, any modification of the equipment by the State; or (iii) the combination, operation, or use of the equipment with equipment or software not supplied by the Contractor under this Contract.

2.145 Continuation of Indemnification Obligations

The Contractor's duty to indemnify under this Section continues in full force and effect, notwithstanding the expiration or early cancellation of the Contract, with respect to any claims based on facts or conditions that occurred before expiration or cancellation.

2.146 Indemnification Procedures

The procedures set forth below must apply to all indemnity obligations under this Contract.

(a) After the State receives notice of the action or proceeding involving a claim for which it will seek indemnification, the State must promptly notify Contractor of the claim in writing and take or assist Contractor in taking, as the case may be, any reasonable action to avoid the imposition of a default judgment against Contractor. No failure to notify the Contractor relieves the Contractor of its indemnification obligations except to the extent that the Contractor can prove damages attributable to the failure. Within 10 days following receipt of written notice from the State relating to any claim, the Contractor must notify the State in writing whether Contractor agrees to assume control of the defense and settlement of that claim (a "Notice of Election"). After notifying Contractor of a claim and before the State receiving Contractor's Notice of Election, the State is entitled to defend against the claim, at the Contractor's expense, and the Contractor will be responsible for any reasonable costs incurred by the State in defending against the claim during that period.



(b) If Contractor delivers a Notice of Election relating to any claim: (i) the State is entitled to participate in the defense of the claim and to employ counsel at its own expense to assist in the handling of the claim and to monitor and advise the State about the status and progress of the defense; (ii) the Contractor must, at the request of the State, demonstrate to the reasonable satisfaction of the State, the Contractor's financial ability to carry out its defense and indemnity obligations under this Contract; (iii) the Contractor must periodically advise the State about the status and progress of the defense and must obtain the prior written approval of the State before entering into any settlement of the claim or ceasing to defend against the claim and (iv) to the extent that any principles of Michigan governmental or public law may be involved or challenged, the State has the right, at its own expense, to control the defense of that portion of the claim involving the principles of Michigan governmental or public law. But the State may retain control of the defense and settlement of a claim by notifying the Contractor in writing within 10 days after the State's receipt of Contractor's information requested by the State under clause (ii) of this paragraph if the State determines that the Contractor has failed to demonstrate to the reasonable satisfaction of the State the Contractor's financial ability to carry out its defense and indemnity obligations under this Section. Any litigation activity on behalf of the State, or any of its subdivisions under this Section, must be coordinated with the Department of Attorney General. In the event the insurer's attorney represents the State under this Section, the insurer's attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

(c) If Contractor does not deliver a Notice of Election relating to any claim of which it is notified by the State as provided above, the State may defend the claim in the manner as it may deem appropriate, at the cost and expense of Contractor. If it is determined that the claim was one against which Contractor was required to indemnify the State, upon request of the State, Contractor must promptly reimburse the State for all the reasonable costs and expenses.

2.150 Termination/Cancellation

2.151 Notice and Right to Cure

If the Contractor breaches the contract, and the State in its sole discretion determines that the breach is curable, then the State will provide the Contractor with written notice of the breach and a time period (not less than 30 days) to cure the Breach. The notice of breach and opportunity to cure is inapplicable for successive or repeated breaches or if the State determines in its sole discretion that the breach poses a serious and imminent threat to the health or safety of any person or the imminent loss, damage, or destruction of any real or tangible personal property.

2.152 Termination for Cause

(a) The State may terminate this contract, for cause, by notifying the Contractor in writing, if the Contractor (i) breaches any of its material duties or obligations under this Contract (including a Chronic Failure to meet any particular SLA), or (ii) fails to cure a breach within the time period specified in the written notice of breach provided by the State

(b) If this Contract is terminated for cause, the Contractor must pay all costs incurred by the State in terminating this Contract, including but not limited to, State administrative costs, reasonable attorneys' fees and court costs, and any reasonable additional costs the State may incur to procure the Services/Deliverables required by this Contract from other sources. Re-procurement costs are not consequential, indirect or incidental damages, and cannot be excluded by any other terms otherwise included in this Contract, provided the costs are not in excess of 50% more than the prices for the Service/Deliverables provided under this Contract.

(c) If the State chooses to partially terminate this Contract for cause, charges payable under this Contract will be equitably adjusted to reflect those Services/Deliverables that are terminated and the State must pay for all Services/Deliverables for which Final Acceptance has been granted provided up to the termination date. Services and related provisions of this Contract that are terminated for cause must cease on the effective date of the termination.

(d) If the State terminates this Contract for cause under this Section, and it is determined, for any reason, that Contractor was not in breach of contract under the provisions of this section, that termination for cause must be deemed to have been a termination for convenience, effective as of the same date, and the rights and obligations of the parties must be limited to that otherwise provided in this Contract for a termination for convenience.

**2.153 Termination for Convenience**

The State may terminate this Contract for its convenience, in whole or part, if the State determines that a termination is in the State's best interest. Reasons for the termination must be left to the sole discretion of the State and may include, but not necessarily be limited to (a) the State no longer needs the Services or products specified in the Contract, (b) relocation of office, program changes, changes in laws, rules, or regulations make implementation of the Services no longer practical or feasible, (c) unacceptable prices for Additional Services or New Work requested by the State, or (d) falsification or misrepresentation, by inclusion or non-inclusion, of information material to a response to any RFP issued by the State. The State may terminate this Contract for its convenience, in whole or in part, by giving Contractor written notice at least 30 days before the date of termination. If the State chooses to terminate this Contract in part, the charges payable under this Contract must be equitably adjusted to reflect those Services/Deliverables that are terminated. Services and related provisions of this Contract that are terminated for cause must cease on the effective date of the termination.

2.154 Termination for Non-Appropriation

(a) Contractor acknowledges that, if this Contract extends for several fiscal years, continuation of this Contract is subject to appropriation or availability of funds for this Contract. If funds to enable the State to effect continued payment under this Contract are not appropriated or otherwise made available, the State must terminate this Contract and all affected Statements of Work, in whole or in part, at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of termination to Contractor. The State must give Contractor at least 30 days advance written notice of termination for non-appropriation or unavailability (or the time as is available if the State receives notice of the final decision less than 30 days before the funding cutoff).

(b) If funding for the Contract is reduced by law, or funds to pay Contractor for the agreed-to level of the Services or production of Deliverables to be provided by Contractor are not appropriated or otherwise unavailable, the State may, upon 30 days written notice to Contractor, reduce the level of the Services or the change the production of Deliverables in the manner and for the periods of time as the State may elect. The charges payable under this Contract will be equitably adjusted to reflect any equipment, services or commodities not provided by reason of the reduction.

(c) If the State terminates this Contract, eliminates certain Deliverables, or reduces the level of Services to be provided by Contractor under this Section, the State must pay Contractor for all Work-in-Process performed through the effective date of the termination or reduction in level, as the case may be and as determined by the State, to the extent funds are available. This Section will not preclude Contractor from reducing or stopping Services/Deliverables or raising against the State in a court of competent jurisdiction, any claim for a shortfall in payment for Services performed or Deliverables finally accepted before the effective date of termination.

2.135 Termination for Criminal Conviction

The State may terminate this Contract immediately and without further liability or penalty in the event Contractor, an officer of Contractor, or an owner of a 25% or greater share of Contractor is convicted of a criminal offense related to a State, public or private Contract or subcontract.

2.156 Termination for Approvals Rescinded

The State may terminate this Contract if any final administrative or judicial decision or adjudication disapproves a previously approved request for purchase of personal services under Constitution 1963, Article 11, § 5, and Civil Service Rule 7-1. In that case, the State will pay the Contractor for only the work completed to that point under the Contract. Termination may be in whole or in part and may be immediate as of the date of the written notice to Contractor or may be effective as of the date stated in the written notice.

2.157 Rights and Obligations upon Termination

(a) If the State terminates this Contract for any reason, the Contractor must (a) stop all work as specified in the notice of termination, (b) take any action that may be necessary, or that the State may direct, for preservation and protection of Deliverables or other property derived or resulting from this Contract that may be in Contractor's possession, (c) return all materials and property provided directly or indirectly to Contractor by any entity, agent or employee of the State, (d) transfer title in, and deliver to, the State, unless otherwise directed, all Deliverables intended to be transferred to the State at the termination of the Contract and which are resulting from the Contract (which must be provided to the State on an "As-Is" basis except to the extent the amounts paid by the State in respect of the items included compensation to Contractor for the provision of warranty services in respect of the materials), and (e) take any action to mitigate and limit any potential damages, or requests for Contractor adjustment or termination settlement costs, to the maximum practical extent, including terminating or limiting as otherwise applicable those subcontracts and outstanding orders for material and supplies resulting from the terminated Contract.



(b) If the State terminates this Contract before its expiration for its own convenience, the State must pay Contractor for all charges due for Services provided before the date of termination and, if applicable, as a separate item of payment under this Contract, for Work In Process, on a percentage of completion basis at the level of completion determined by the State. All completed or partially completed Deliverables prepared by Contractor under this Contract, at the option of the State, becomes the State's property, and Contractor is entitled to receive equitable fair compensation for the Deliverables. Regardless of the basis for the termination, the State is not obligated to pay, or otherwise compensate, Contractor for any lost expected future profits, costs or expenses incurred with respect to Services not actually performed for the State.

(c) Upon a good faith termination, the State may assume, at its option, any subcontracts and agreements for services and deliverables provided under this Contract, and may further pursue completion of the Services/Deliverables under this Contract by replacement contract or otherwise as the State may in its sole judgment deem expedient.

2.158 Reservation of Rights

Any termination of this Contract or any Statement of Work issued under it by a party must be with full reservation of, and without prejudice to, any rights or remedies otherwise available to the party with respect to any claims arising before or as a result of the termination.

2.160 Termination by Contractor

2.161 Termination by Contractor

If the State breaches the Contract, and the Contractor in its sole discretion determines that the breach is curable, then the Contractor will provide the State with written notice of the breach and a time period (not less than 30 days) to cure the breach. The Notice of Breach and opportunity to cure is inapplicable for successive and repeated breaches.

The Contractor may terminate this Contract if the State (i) materially breaches its obligation to pay the Contractor undisputed amounts due and owing under this Contract, (ii) breaches its other obligations under this Contract to an extent that makes it impossible or commercially impractical for the Contractor to perform the Services, or (iii) does not cure the breach within the time period specified in a written notice of breach. But the Contractor must discharge its obligations under **Section 2.160** before it terminates the Contract.

2.170 Transition Responsibilities

2.171 Contractor Transition Responsibilities

If the State terminates this contract, for convenience or cause, or if the Contract is otherwise dissolved, voided, rescinded, nullified, expires or rendered unenforceable, the Contractor agrees to comply with direction provided by the State to assist in the orderly transition of equipment, services, software, leases, etc. to the State or a third party designated by the State. If this Contract expires or terminates, the Contractor agrees to make all reasonable efforts to effect an orderly transition of services within a reasonable period of time that in no event will exceed 180 days. These efforts must include, but are not limited to, those listed in **Sections 2.141, 2.142, 2.143, 2.144, and 2.145.**

2.172 Contractor Personnel Transition

The Contractor must work with the State, or a specified third party, to develop a transition plan setting forth the specific tasks and schedule to be accomplished by the parties, to effect an orderly transition. The Contractor must allow as many personnel as practicable to remain on the job to help the State, or a specified third party, maintain the continuity and consistency of the services required by this Contract. In addition, during or following the transition period, in the event the State requires the Services of the Contractor's subcontractors or vendors, as necessary to meet its needs, Contractor agrees to reasonably, and with good-faith, work with the State to use the Services of Contractor's subcontractors or vendors. Contractor will notify all of Contractor's subcontractors of procedures to be followed during transition.

2.173 Contractor Information Transition

The Contractor agrees to provide reasonable detailed specifications for all Services/Deliverables needed by the State, or specified third party, to properly provide the Services/Deliverables required under this Contract. The Contractor will provide the State with asset management data generated from the inception of this Contract through the date on which this Contractor is terminated in a comma-delineated format unless otherwise requested by the State. The Contractor will deliver to the State any remaining owed reports and documentation still in Contractor's possession subject to appropriate payment by the State.

**2.174 Contractor Software Transition**

The Contractor must reasonably assist the State in the acquisition of any Contractor software required to perform the Services/use the Deliverables under this Contract. This must include any documentation being used by the Contractor to perform the Services under this Contract. If the State transfers any software licenses to the Contractor, those licenses must, upon expiration of the Contract, transfer back to the State at their current revision level. Upon notification by the State, Contractor may be required to freeze all non-critical changes to Deliverables/Services.

2.175 Transition Payments

If the transition results from a termination for any reason, reimbursement must be governed by the termination provisions of this Contract. If the transition results from expiration, the Contractor will be reimbursed for all reasonable transition costs (i.e. costs incurred within the agreed period after contract expiration that result from transition operations) at the rates agreed upon by the State. The Contractor will prepare an accurate accounting from which the State and Contractor may reconcile all outstanding accounts.

2.176 State Transition Responsibilities

In the event that this Contract is terminated, dissolved, voided, rescinded, nullified, or otherwise rendered unenforceable, the State agrees to perform the following obligations, and any others upon which the State and the Contractor agree:

- (a) Reconciling all accounts between the State and the Contractor;
- (b) Completing any pending post-project reviews.

2.180 Stop Work**2.181 Stop Work Orders**

The State may, at any time, by written stop work order to Contractor, require that Contractor stop all, or any part, of the work called for by the Contract for a period of up to 90 calendar days after the stop work order is delivered to Contractor, and for any further period to which the parties may agree. The stop work order must be identified as a stop work order and must indicate that it is issued under this **Section 2.150**. Upon receipt of the stop work order, Contractor must immediately comply with its terms and take all reasonable steps to minimize incurring costs allocable to the work covered by the stop work order during the period of work stoppage. Within the period of the stop work order, the State must either: (a) cancel the stop work order; or (b) terminate the work covered by the stop work order as provided in **Section 2.130**.

2.182 Cancellation or Expiration of Stop Work Order

The Contractor must resume work if the State cancels a Stop Work Order or if it expires. The parties will agree upon an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract must be modified, in writing, accordingly, if: (a) the stop work order results in an increase in the time required for, or in Contractor's costs properly allocable to, the performance of any part of the Contract; and (b) Contractor asserts its right to an equitable adjustment within 30 calendar days after the end of the period of work stoppage; provided that, if the State decides the facts justify the action, the State may receive and act upon a Contractor proposal submitted at any time before final payment under the Contract. Any adjustment will conform to the requirements of **Section 2.024**.

2.183 Allowance of Contractor Costs

If the stop work order is not canceled and the work covered by the stop work order is terminated for reasons other than material breach, the termination must be deemed to be a termination for convenience under **Section 2.130**, and the State will pay reasonable costs resulting from the stop work order in arriving at the termination settlement. For the avoidance of doubt, the State is not be liable to Contractor for loss of profits because of a stop work order issued under this **Section 2.150**.

2.190 Dispute Resolution**2.191 In General**

Any claim, counterclaim, or dispute between the State and Contractor arising out of or relating to the Contract or any Statement of Work must be resolved as follows. For all Contractor claims seeking an increase in the amounts payable to Contractor under the Contract, or the time for Contractor's performance, Contractor must submit a letter, together with all data supporting the claims, executed by Contractor's Contract Administrator or the Contract Administrator's designee certifying that (a) the claim is made in good faith,



(b) the amount claimed accurately reflects the adjustments in the amounts payable to Contractor or the time for Contractor's performance for which Contractor believes the State is liable and covers all costs of every type to which Contractor is entitled from the occurrence of the claimed event, and (c) the claim and the supporting data are current and complete to Contractor's best knowledge and belief.

2.192 Informal Dispute Resolution

(a) All disputes between the parties must be resolved under the Contract Management procedures in this Contract. If the parties are unable to resolve any disputes after compliance with the processes, the parties must meet with the Director of Purchasing Operations, DMB, or designee, for the purpose of attempting to resolve the dispute without the need for formal legal proceedings, as follows:

- (i) The representatives of Contractor and the State must meet as often as the parties reasonably deem necessary to gather and furnish to each other all information with respect to the matter in issue which the parties believe to be appropriate and germane in connection with its resolution. The representatives must discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding.
- (ii) During the course of negotiations, all reasonable requests made by one party to another for non-privileged information reasonably related to the Contract will be honored in order that each of the parties may be fully advised of the other's position.
- (iii) The specific format for the discussions will be left to the discretion of the designated State and Contractor representatives, but may include the preparation of agreed upon statements of fact or written statements of position.
- (iv) Following the completion of this process within 60 calendar days, the Director of Purchasing Operations, DMB, or designee, must issue a written opinion regarding the issue(s) in dispute within 30 calendar days. The opinion regarding the dispute must be considered the State's final action and the exhaustion of administrative remedies.

(b) This Section will not be construed to prevent either party from instituting, and a party is authorized to institute, formal proceedings earlier to avoid the expiration of any applicable limitations period, to preserve a superior position with respect to other creditors, or under **Section 2.163**.

(c) The State will not mediate disputes between the Contractor and any other entity, except state agencies, concerning responsibility for performance of work under the Contract.

2.193 Injunctive Relief

The only circumstance in which disputes between the State and Contractor will not be subject to the provisions of **Section 2.162** is where a party makes a good faith determination that a breach of the terms of the Contract by the other party is the that the damages to the party resulting from the breach will be so immediate, so large or severe and so incapable of adequate redress after the fact that a temporary restraining order or other immediate injunctive relief is the only adequate remedy.

2.194 Continued Performance

Each party agrees to continue performing its obligations under the Contract while a dispute is being resolved except to the extent the issue in dispute precludes performance (dispute over payment must not be deemed to preclude performance) and without limiting either party's right to terminate the Contract as provided in **Section 2.150**, as the case may be.

2.200 Federal and State Contract Requirements

2.201 Nondiscrimination

In the performance of the Contract, Contractor agrees not to discriminate against any employee or applicant for employment, with respect to his or her hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, ancestry, age, sex, height, weight, marital status, physical or mental disability. Contractor further agrees that every subcontract entered into for the performance of this Contract or any purchase order resulting from this Contract will contain a provision requiring non-discrimination in employment, as specified here, binding upon each Subcontractor. This covenant is required under the Elliot Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, et seq., and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, et seq., and any breach of this provision may be regarded as a material breach of the Contract.

**2.202 Unfair Labor Practices**

Under 1980 PA 278, MCL 423.321, et seq., the State must not award a Contract or subcontract to an employer whose name appears in the current register of employers failing to correct an unfair labor practice compiled under section 2 of the Act. This information is compiled by the United States National Labor Relations Board. A Contractor of the State, in relation to the Contract, must not enter into a contract with a Subcontractor, manufacturer, or supplier whose name appears in this register. Under section 4 of 1980 PA 278, MCL 423.324, the State may void any Contract if, after award of the Contract, the name of Contractor as an employer or the name of the Subcontractor, manufacturer or supplier of Contractor appears in the register.

2.203 Workplace Safety and Discriminatory Harassment

In performing Services for the State, the Contractor must comply with the Department of Civil Services Rule 2-20 regarding Workplace Safety and Rule 1-8.3 regarding Discriminatory Harassment. In addition, the Contractor must comply with Civil Service regulations and any applicable agency rules provided to the Contractor. For Civil Service Rules, see <http://www.mi.gov/mdcs/0,1607,7-147-6877---,00.html>.

2.210 Governing Law**2.211 Governing Law**

The Contract must in all respects be governed by, and construed according to, the substantive laws of the State of Michigan without regard to any Michigan choice of law rules that would apply the substantive law of any other jurisdiction to the extent not inconsistent with, or pre-empted by federal law.

2.212 Compliance with Laws

Contractor shall comply with all applicable state, federal and local laws and ordinances in providing the Services/Deliverables.

2.213 Jurisdiction

Any dispute arising from the Contract must be resolved in the State of Michigan. With respect to any claim between the parties, Contractor consents to venue in Ingham County, Michigan, and irrevocably waives any objections it may have to the jurisdiction on the grounds of lack of personal jurisdiction of the court or the laying of venue of the court or on the basis of forum non conveniens or otherwise. Contractor agrees to appoint agents in the State of Michigan to receive service of process.

2.220 Limitation of Liability**2.221 Limitation of Liability**

Neither the Contractor nor the State is liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages. This limitation of liability does not apply to claims for infringement of United States patent, copyright, trademark or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of this Contract calling for liquidated damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on this Contract.

2.230 Disclosure Responsibilities**2.231 Disclosure of Litigation**

(a) Disclosure. Contractor must disclose any material criminal litigation, investigations or proceedings involving the Contractor (and each Subcontractor) or any of its officers or directors or any litigation, investigations or proceedings under the Sarbanes-Oxley Act. In addition, each Contractor (and each Subcontractor) must notify the State of any material civil litigation, arbitration or proceeding which arises during the term of the Contract and extensions, to which Contractor (or, to the extent Contractor is aware, any Subcontractor) is a party, and which involves: (i) disputes that might reasonably be expected to adversely affect the viability or financial stability of Contractor or any Subcontractor; or (ii) a claim or written allegation of fraud against Contractor or, to the extent Contractor is aware, any Subcontractor by a governmental or public entity arising out of their business dealings with governmental or public entities. The Contractor must disclose in writing to the Contract Administrator any litigation, investigation, arbitration or other proceeding (collectively, "Proceeding") within 30 days of its occurrence.



Details of settlements which are prevented from disclosure by the terms of the settlement may be annotated. Information provided to the State from Contractor's publicly filed documents referencing its material litigation will be deemed to satisfy the requirements of this Section.

(b) Assurances. If any Proceeding disclosed to the State under this Section, or of which the State otherwise becomes aware, during the term of this Contract would cause a reasonable party to be concerned about:

- (i) the ability of Contractor (or a Subcontractor) to continue to perform this Contract according to its terms and conditions, or
- (ii) whether Contractor (or a Subcontractor) in performing Services for the State is engaged in conduct which is similar in nature to conduct alleged in the Proceeding, which conduct would constitute a breach of this Contract or a violation of Michigan law, regulations or public policy, then the Contractor must provide the State all reasonable assurances requested by the State to demonstrate that:
 - (a) Contractor and its Subcontractors will be able to continue to perform this Contract and any Statements of Work according to its terms and conditions, and
 - (b) Contractor and its Subcontractors have not and will not engage in conduct in performing the Services which is similar in nature to the conduct alleged in the Proceeding.

(c) Contractor must make the following notifications in writing:

- (1) Within 30 days of Contractor becoming aware that a change in its ownership or officers has occurred, or is certain to occur, or a change that could result in changes in the valuation of its capitalized assets in the accounting records, Contractor must notify DMB Purchasing Operations.
- (2) Contractor must also notify DMB Purchasing Operations within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership or officers.
- (3) Contractor must also notify DMB Purchasing Operations within 30 days whenever changes to company affiliations occur.

2.232 Call Center Disclosure

Contractor and/or all subcontractors involved in the performance of this Contract providing call or contact center services to the State must disclose the location of its call or contact center services to inbound callers. Failure to disclose this information is a material breach of this Contract.

2.233 Bankruptcy

The State may, without prejudice to any other right or remedy, terminate this Contract, in whole or in part, and, at its option, may take possession of the "Work in Process" and finish the Works in Process by whatever appropriate method the State may deem expedient if:

- (a) the Contractor files for protection under the bankruptcy laws;
- (b) an involuntary petition is filed against the Contractor and not removed within 30 days;
- (c) the Contractor becomes insolvent or if a receiver is appointed due to the Contractor's insolvency;
- (d) the Contractor makes a general assignment for the benefit of creditors; or
- (e) the Contractor or its affiliates are unable to provide reasonable assurances that the Contractor or its affiliates can deliver the services under this Contract.

Contractor will fix appropriate notices or labels on the Work in Process to indicate ownership by the State. To the extent reasonably possible, materials and Work in Process must be stored separately from other stock and marked conspicuously with labels indicating ownership by the State.

2.240 Performance

2.241 Time of Performance

(a) Contractor must use commercially reasonable efforts to provide the resources necessary to complete all Services and Deliverables according to the time schedules contained in the Statements of Work and other Exhibits governing the work, and with professional quality.



(b) Without limiting the generality of **Section 2.211(a)**, Contractor must notify the State in a timely manner upon becoming aware of any circumstances that may reasonably be expected to jeopardize the timely and successful completion of any Deliverables/Services on the scheduled due dates in the latest State-approved delivery schedule and must inform the State of the projected actual delivery date.

(c) If the Contractor believes that a delay in performance by the State has caused or will cause the Contractor to be unable to perform its obligations according to specified Contract time periods, the Contractor must notify the State in a timely manner and must use commercially reasonable efforts to perform its obligations according to the Contract time periods notwithstanding the State's failure. Contractor will not be in default for a delay in performance to the extent the delay is caused by the State.

2.242 Service Level Agreements (SLAs)

(a) SLAs will be completed with the following operational considerations:

- (i) SLAs will not be calculated for individual Incidents where any event of Excusable Failure has been determined; Incident means any interruption in Services.
- (ii) SLAs will not be calculated for individual Incidents where loss of service is planned and where the State has received prior notification or coordination.
- (iii) SLAs will not apply if the applicable Incident could have been prevented through planning proposed by Contractor and not implemented at the request of the State. To invoke this consideration, complete documentation relevant to the denied planning proposal must be presented to substantiate the proposal.
- (iv) Time period measurements will be based on the time Incidents are received by the Contractor and the time that the State receives notification of resolution based on 24x7x365 time period, except that the time period measurement will be suspended based on the following:
 1. Time period(s) will not apply where Contractor does not have access to a physical State Location and where access to the State Location is necessary for problem identification and resolution.
 2. Time period(s) will not apply where Contractor needs to obtain timely and accurate information or appropriate feedback and is unable to obtain timely and accurate information or appropriate feedback from the State.

(b) Chronic Failure for any Service(s) will be defined as three unscheduled outage(s) or interruption(s) on any individual Service for the same reason or cause or if the same reason or cause was reasonably discoverable in the first instance over a rolling 30 day period. Chronic Failure will result in the State's option to terminate the effected individual Service(s) and procure them from a different vendor for the chronic location(s) with Contractor to pay the difference in charges for up to three additional months. The termination of the Service will not affect any tiered pricing levels.

(c) Root Cause Analysis will be performed on any Business Critical outage(s) or outage(s) on Services when requested by the Contract Administrator. Contractor will provide its analysis within two weeks of outage(s) and provide a recommendation for resolution.

(d) All decimals must be rounded to two decimal places with five and greater rounding up and four and less rounding down unless otherwise specified.

2.243 Liquidated Damages

The parties acknowledge that system down-time will interfere with the timely and proper completion of the Contract, to the loss and damage of the State, and that it would be impracticable and extremely difficult to fix the actual damage sustained by the State as a result of any such delay. Therefore, Contractor and the State agree that in the case of any such system down-time in respect of which the State does not elect to exercise its rights under **Section 2.120**, the State may assess liquidated damages against Contractor as specified in this Section.

If system down-time occurs, then the State shall be entitled to collect liquidated damages in the amount of \$1,000.00 when the system is down four (4) hours or more on a single business day and an additional \$1,000.00 per day for each day Contractor fails to remedy system availability to at least 99% of each weekly period per section 1.022.5.7.1.

It is acknowledged that an Unauthorized Removal will interfere with the timely and proper completion of the Contract, to the loss and damage of the State, and that it would be impracticable and extremely difficult to fix the actual damage sustained by the State as a result of any Unauthorized Removal. Therefore, Contractor and the State agree that in the case of any Unauthorized Removal in respect of which the State does not elect to exercise its rights under **Section 2.120**, the State may assess liquidated damages against Contractor as specified below.



For the Unauthorized Removal of any Key Personnel designated in the applicable Statement of Work, the liquidated damages amount is \$25,000.00 per individual if the Contractor identifies a replacement approved by the State under **Section 2.060** and assigns the replacement to the Project to shadow the Key Personnel who is leaving for a period of at least 30 days before the Key Personnel's removal.

If Contractor fails to assign a replacement to shadow the removed Key Personnel for at least 30 days, in addition to the \$25,000.00 liquidated damages for an Unauthorized Removal, Contractor must pay the amount of \$833.33 per day for each day of the 30 day shadow period that the replacement Key Personnel does not shadow the removed Key Personnel, up to \$25,000.00 maximum per individual. The total liquidated damages that may be assessed per Unauthorized Removal and failure to provide 30 days of shadowing must not exceed \$50,000.00 per individual.

2.244 Excusable Failure

Neither party will be liable for any default, damage or delay in the performance of its obligations under the Contract to the extent the default, damage or delay is caused by government regulations or requirements (executive, legislative, judicial, military or otherwise), power failure, electrical surges or current fluctuations, lightning, earthquake, war, water or other forces of nature or acts of God, delays or failures of transportation, equipment shortages, suppliers' failures, or acts or omissions of common carriers, fire; riots, civil disorders; strikes or other labor disputes, embargoes; injunctions (provided the injunction was not issued as a result of any fault or negligence of the party seeking to have its default or delay excused); or any other cause beyond the reasonable control of a party; provided the non-performing party and its Subcontractors are without fault in causing the default or delay, and the default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans or other means, including disaster recovery plans.

If a party does not perform its contractual obligations for any of the reasons listed above, the non-performing party will be excused from any further performance of its affected obligation(s) for as long as the circumstances prevail. But the party must use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay. A party must promptly notify the other party in writing immediately after the excusable failure occurs, and also when it abates or ends.

If any of the above-enumerated circumstances substantially prevent, hinder, or delay the Contractor's performance of the Services/provision of Deliverables for more than 10 Business Days, and the State determines that performance is not likely to be resumed within a period of time that is satisfactory to the State in its reasonable discretion, then at the State's option: (a) the State may procure the affected Services/Deliverables from an alternate source, and the State is not be liable for payment for the unperformed Services/ Deliverables not provided under the Contract for so long as the delay in performance continues; (b) the State may terminate any portion of the Contract so affected and the charges payable will be equitably adjusted to reflect those Services/Deliverables terminated; or (c) the State may terminate the affected Statement of Work without liability to Contractor as of a date specified by the State in a written notice of termination to the Contractor, except to the extent that the State must pay for Services/Deliverables provided through the date of termination.

The Contractor will not have the right to any additional payments from the State as a result of any Excusable Failure occurrence or to payments for Services not rendered/Deliverables not provided as a result of the Excusable Failure condition. Defaults or delays in performance by Contractor which are caused by acts or omissions of its Subcontractors will not relieve Contractor of its obligations under the Contract except to the extent that a Subcontractor is itself subject to an Excusable Failure condition described above and Contractor cannot reasonably circumvent the effect of the Subcontractor's default or delay in performance through the use of alternate sources, workaround plans or other means.

2.250 Approval of Deliverables

Deleted – Not Applicable

2.260 Ownership

2.261 Ownership of Work Product by State

The State owns all Deliverables as they are works made for hire by the Contractor for the State. The State owns all United States and international copyrights, trademarks, patents or other proprietary rights in the Deliverables.

**2.262 Vesting of Rights**

With the sole exception of any preexisting licensed works identified in the SOW, the Contractor assigns, and upon creation of each Deliverable automatically assigns, to the State, ownership of all United States and international copyrights, trademarks, patents, or other proprietary rights in each and every Deliverable, whether or not registered by the Contractor, insofar as any the Deliverable, by operation of law, may not be considered work made for hire by the Contractor for the State. From time to time upon the State's request, the Contractor must confirm the assignment by execution and delivery of the assignments, confirmations of assignment, or other written instruments as the State may request. The State may obtain and hold in its own name all copyright, trademark, and patent registrations and other evidence of rights that may be available for Deliverables.

2.263 Rights in Data

(a) The State is the owner of all data made available by the State to the Contractor or its agents, Subcontractors or representatives under the Contract. The Contractor will not use the State's data for any purpose other than providing the Services, nor will any part of the State's data be disclosed, sold, assigned, leased or otherwise disposed of to the general public or to specific third parties or commercially exploited by or on behalf of the Contractor. No employees of the Contractor, other than those on a strictly need-to-know basis, have access to the State's data. Contractor will not possess or assert any lien or other right against the State's data. Without limiting the generality of this Section, the Contractor must only use personally identifiable information as strictly necessary to provide the Services and must disclose the information only to its employees who have a strict need-to-know the information. The Contractor must comply at all times with all laws and regulations applicable to the personally identifiable information.

(b) The State is the owner of all State-specific data under the Contract. The State may use the data provided by the Contractor for any purpose. The State will not possess or assert any lien or other right against the Contractor's data. Without limiting the generality of this Section, the State may use personally identifiable information only as strictly necessary to utilize the Services and must disclose the information only to its employees who have a strict need to know the information, except as provided by law. The State must comply at all times with all laws and regulations applicable to the personally identifiable information. Other material developed and provided to the State remains the State's sole and exclusive property.

2.264 Ownership of Materials

The State and the Contractor will continue to own their respective proprietary technologies developed before entering into the Contract. Any hardware bought through the Contractor by the State, and paid for by the State, will be owned by the State. Any software licensed through the Contractor and sold to the State, will be licensed directly to the State.

2.270 State Standards

2.271 Existing Technology Standards – Deleted – Not Applicable

2.272 Acceptable Use Policy - Deleted-Not Applicable

2.273 Systems Changes - Deleted-Not Applicable

2.280 Extended Purchasing - Deleted – Not Applicable**2.290 Environmental Provision**

2.291 Environmental Provision - Deleted-Not/Applicable



Attachment A, Price Proposal

Age-Based Allocation Option (A units)


Size of Investment Portfolio	Program Management Fees (In Basis Points)	Investment Management Fees	Other Annual Fees (Specify Details) (1)	Fee Sharing	State Administrative Fee *	Total Fees (In Basis Points) **	Upfront Sales Load (2)	Contingent Sales Load
1) \$1,000,000,000 or less	50	43-63	25	N/A	10 Basis Points (bps)	128-148	0 - 4.25%	N/A
2) \$1,000,000,000.01 or greater	45	43-63	25	N/A	10 bps	123-143	0 - 4.25%	N/A

Individual Fund Options (A units)

Size of Investment Portfolio	Program Management Fees (In Basis Points)	Investment Management Fees	Other Annual Fees (Specify Details) (1)	Fee Sharing	State Administrative Fee *	Total Fees (In Basis Points) **	Upfront Sales Load (2)	Contingent Sales Load
1) \$1,000,000,000 or less	50	43-107	25	N/A	10 Basis Points (bps)	128-192	0 - 4.25%	N/A
2) \$1,000,000,000.01 or greater	45	43-107	25	N/A	10 bps	123-187	0 - 4.25%	N/A

Age-Based Allocation Option (C units)

Size of Investment Portfolio	Program Management Fees (In Basis Points)	Investment Management Fees	Other Annual Fees (Specify Details) (1)	Fee Sharing	State Administrative Fee *	Total Fees (In Basis Points) **	Upfront Sales Load (2)	Contingent Sales Load
1) \$1,000,000,000 or less	50	43-63	75	N/A	10 Basis Points (bps)	178-198	N/A	A 1% CDSC applies for 12 months from the date of contribution
2) \$1,000,000,000.01 or greater	45	43-63	75	N/A	10 bps	173-193	N/A	A 1% CDSC applies for 12 months from

ATTACHMENT A								CONTRACT NO. 071B9200164		
								the date of contribution		



Individual Fund Options (C units)

Size of Investment Portfolio	Program Management Fees (In Basis Points)	Investment Management Fees	Other Annual Fees (Specify Details) (1)	Fee Sharing	State Administrative Fee *	Total Fees (In Basis Points) **	Upfront Sales Load (2)	Contingent Sales Load
1) \$1,000,000,000 or less	50	43-107	33	N/A	10 Basis Points (bps)	136-200	N/A	A 1% CDSC applies for 12 months from the date of contribution
2) \$1,000,000,000.01 or greater	45	43-107	33	N/A	10 bps	131-195	N/A	A 1% CDSC applies for 12 months from the date of contribution

(1) On-going trail commission (bps) paid annually to the broker/dealer firm of record for servicing the account. An annual Account Maintenance Fee of \$25 applies to accounts less than \$5,000, in addition to on-going trail commission.

(2) Step-variable pricing for A units/shares (Upfront Sales Load) is based on the aggregate contributions for an individual account owner. In addition, these sales charges (Upfront Sales Load) may be aggregated based on a Letter of Intent by the account owner at time of initial purchase. The step-variable pricing follows:

Aggregate Contributions	Upfront Sales Load
\$0-99,999	4.25%
\$100,000-249,999	3.50%
\$250,000-499,999	2.50%
\$500,000-999,999	2.00%
\$1,000,000 or greater	0.00%

* State is not responsible for and will not provide funding of any type in connection with administration of the advisor-sold MESP. All administrative costs must be paid from the program assets based on the account values. The contractor will submit State administrative fees to the State monthly in arrears. Specific details for payment routing will be finalized with the Contract Compliance Inspector after contract award.

** The "Total Fees" column is to include all expenditures necessary to fulfill the requirements of this Contract. Pricing will be based on basis points of the total assets. Payment for this contract will occur monthly based on the advisor-sold MESP average daily net assets of the accounts and paid by the account holder. Pursuant to PA 161, total program administrative fees cannot exceed 2.0% of the average daily net assets of the accounts.

1. C units/shares do not convert to A units.

2. A 1% Contingent Sales Load (CDSC) applies for 12 months from the date of the contribution



TIAA-CREF Tuition Financing, Inc. (TFI) will pay brokers/advisors to offer the MESP Advisor-Sold MESP as follows:

	Investor Pays	Broker Receives	TFI Retains
A Load	0 – 4.25%	0 – 4.25%	0
A Annual Charge	0.25%	0.25%	0
C Annual Charge	0.33 – 0.75%	0.33 – 0.75%	0

Neither TFI nor AGID receives compensation from the A-Unit sales load, the A-Unit annual charge, or the C-Unit annual charge.